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Nederlandse vertaling:

Globale rechtvaardigheid: Een beoordeling van
cosmopolitanistische benaderingen in het licht van
enkele 'realistische' tegenwerpingen.

Cover: "Politicians discussing global warming" by Isaac Cordal.

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***Global justice:
Assessing cosmopolitan approaches
in the light of some 'realist' objections.***

*How should we deal with the feasibility problems
regarding climate change?*

Proefschrift voorgelegd tot het behalen van de graad van
Doctor in de Wijsbegeerte

2016

Acknowledgements

For the past four years, I have delved into the topic of global justice. It has been a challenging and intense experience, and it is with a sense of satisfaction that I present this resulting PhD dissertation. The research leading to this dissertation would not have been possible without the generous financial support of the Fund for Scientific Research Flanders (FWO), for which I am most grateful.

I am, of course, indebted to a great number of people who helped me realise this dissertation.

First, I would like to thank Sigrid Sterckx, my supervisor, for the opportunity to become her assistant at Ghent University and her crucial guidance in obtaining the funding for this project. Moreover, I benefitted greatly from her expertise on intellectual property rights and patents.

Next, I am grateful to the members of the jury, Prof. Dr. Heather Widdows (University of Birmingham), Dr. Ronald Tinnevelt (Radboud University), Prof. Dr. Dries Lesage (Ghent University), and Prof. Dr. Tom Claes (Ghent University) for their valuable time and efforts.

I would also like to express my gratitude towards Julian Cockbain. His language editing and expertise on patents have lifted this dissertation to a higher level. Moreover, I very much enjoyed his sharp mind and impressive general knowledge (e.g. of oddly named British desserts).

I am very grateful to my friends and colleagues at the Department of Philosophy and Moral Science of Ghent University. Although the academic world can be quite competitive, I have always enjoyed their warm support and friendly encouragements. Special thanks go out to Lisa and Kjell, with whom I had the privilege of sharing an office. Furthermore, I am greatly indebted to Wouter, Lisa, and Jo, for the fruitful collaboration and inspiring conversations. Kasper, Wannes, and Lore deserve special mentioning, for putting up with my personal interpretation of ‘w(h)ining and dining’ during our lunch meetings, especially in the final stage of this project.

Special thanks go to my friends outside academia. Whether from Ghent, SiGi (and its suburbs), Zele, or Kuwait, I could always count on your good vibrations. Many thanks to you all!

I would like to take this opportunity to thank my parents for their moral support and the values they have taught me, my brothers Michiel and Servaas, and my sister Heleen. When my moral compass is swerving, my family is always there to help me realign it.

Finally, I would like to express my sincerest gratitude towards Julie. Her care, support and understanding, helped me through the more difficult moments of this endeavour. I am especially thankful for her ability to remind me of what really matters in life and look forward to discovering such an essential aspect in our near future.

Table of Contents

Chapter 1	Introduction	1
1.1	Globalization and global justice.....	3
1.2	Feasibility objections.....	13
1.3	How to overcome the feasibility objections at the level of the individual moral agent?	21
1.4	References	22
 <i>Part I Globalization and global justice.....</i>		 <i>25</i>
Chapter 2	Variants of cosmopolitanism: A realistic cosmopolitan utopia	27
2.1	What cosmopolitanism is not	27
2.1.1	Political Realism	27
2.1.2	The society-of-states approach and its descendants	29
2.2	Cosmopolitanism	36
2.2.1	What all variants of cosmopolitanism have in common	36
2.2.2	Different conceptions of cosmopolitanism	37
2.2.3	Different accounts of moral cosmopolitanism.....	40
2.2.3.1	Utilitarianism	40
2.2.3.2	Contractarian accounts of cosmopolitanism.....	43
2.2.3.3	A needs-based account of cosmopolitanism.....	50
2.2.3.4	The capability approach	53
2.2.3.5	The Kantian account of cosmopolitanism	55
2.2.3.6	Rights-based accounts	58
2.3	Our position	62
2.4	References.....	64
Chapter 3	Globalization and responsibility for human rights.....	69
3.1	Introduction	69
3.2	General and special obligations	71
3.3	A relationship one has reason to value	74
3.4	Harm as a good reason to value a relationship	76

3.4.1	Does our economic interdependence constitute a reason to value relationships?.....	78
3.4.2	Does climate change constitute a good reason to value relationships?.....	85
3.5	The burden of proof	86
3.6	Concluding remarks	89
3.7	References.....	90
Chapter 4	The lack of access to medicines and the Health Impact Fund scheme	95
4.1	Introduction	95
4.2	The access to medicines crisis	96
4.3	Pharmaceutical industry R&D and patenting	97
4.4	Earlier proposals for addressing the lack of access to medicines	99
4.5	Currently proposed solutions	100
4.6	A new idea: The Health Impact Fund (HIF).....	103
4.7	The debate over HIF's potential impact on the generic pharmaceutical industry	104
4.8	Problems resulting from HIF's linkage with patents	106
4.9	Problems arising from the obligations HIF registrants must accept.....	107
4.10	Problems resulting from the baseline calculation of the health impact	108
4.11	Problems regarding security of funding	108
4.12	The attraction of HIF: the reward	109
4.13	The attraction of HIF: a potential solution to the "last mile" problem.....	110
4.14	References.....	111
Part II	Feasibility objections	113
Chapter 5	Moral disengagement and the motivational gap in climate change	115
5.1	Introduction	115
5.2	The agency of individual emitters	117
5.3	Mechanisms of moral disengagement in climate change	119
5.3.1	Mechanisms of moral disengagement related to reprehensible conduct	120
5.3.2	Mechanisms of moral disengagement related to injurious effects.....	121
5.3.3	Mechanisms of moral disengagement operating at the intersection between reprehensible conduct and injurious effects	122
5.3.4	Mechanisms of moral disengagement related to victims	125
5.4	Moral disengagement and the motivational gap.....	126
5.5	Tackling moral disengagement	128
5.6	Concluding remarks	130
5.7	References.....	131

Chapter 6	The delegated authority model misused as a strategy of disengagement in the case of climate change.....	137
6.1	Introduction	137
6.2	Human rights threatened by climate change.....	138
6.3	The delegated authority model	142
6.4	The legitimacy of the United Nations Framework Convention on Climate Change (UNFCCC).....	143
6.5	The feasibility of an institutional alternative	145
6.6	How to deal with the illegitimacy of the UNFCCC on the individual level?	149
6.6.1	No more hiding behind the delegated authority argument	149
6.6.2	Take responsibility, both politically and individually	152
6.7	Concluding remarks	156
6.8	References.....	157
Chapter 7	Adjudicating conflicts between justice and democracy: The climate change challenge	161
7.1	Introduction: The relationship between democracy and justice	161
7.1.1	Democracy	162
7.1.2	Justice	164
7.2	Case study: The climate change challenge.....	166
7.2.1	The problem of persistent losers	166
7.2.2	The failure of democracy?.....	167
7.2.3	The failure of the UNFCCC	168
7.2.4	Conclusion regarding the case study.....	169
7.3	How to solve the conflict between democracy and justice?	170
7.3.1	Role reminders and the internalization of just reasons	170
7.3.2	Institutional reforms.....	173
7.3.2.1	The international level	173
7.3.2.2	The national level	174
7.3.3	The role of courts and litigation	176
7.4	Concluding remarks	177
7.5	References.....	180
 Part III How to overcome the feasibility objections at the level of the individual moral agent?		183
Chapter 8	How to overcome the feasibility objections at the level of the individual moral agent?	185
8.1	'New Harms' and the phenomenology of agency	185
8.2	Increasing moral motivation by enhancing moral judgment.....	188
8.3	Institutional efficacy and the delegation of responsibility	193
8.4	Role reminders for politicians: The moral obligation to nudge	195
8.5	Concluding remarks	199
8.6	References.....	201

Chapter 9	Conclusion.....	205
9.1	Globalization and global justice	205
9.2	Feasibility objections	209
9.3	How to overcome the feasibility objections at the level of the individual moral agent?.....	213
9.4	Avenues for future research	215
Nederlandstalige samenvatting		217
List of publications by Andries De Smet		223

Chapter 1 Introduction

Cosmopolitan accounts of justice received a major impetus from Peter Singer's 1972 article *Famine, Affluence, and Morality* on the moral illegitimacy of famine, which argued for a radical rethinking of our moral duties to prevent deaths from famine wherever they occur. Since Singer's article appeared, the process of globalization has only intensified. The concept of globalization, however, is contested, giving rise to different interpretations and definitions. We will here use the working definition offered by Manfred Steger:

Globalization refers to a multidimensional set of social processes that create, multiply, stretch, and intensify worldwide social interdependencies and exchanges while at the same time fostering in people a growing awareness of deepening connections between the local and the distant. (Steger 2003, 13)

As a consequence of this complex phenomenon, the world we live in is characterized by an unprecedented level of global interconnectedness and interdependence. International trade increases ever faster and finance seems to know no borders. Information and communication technologies, as well as international travel, increase our knowledge of living conditions in other parts of the world. The resultant benefits are numerous and irrefutable, e.g. improvements in healthcare and information access. However, globalization of industry, massive population growth and ever-increasing energy demands have also brought severe burdens which are spread across the globe – e.g. climate change, a problem which has a clear dimension of (in)justice in view of the inverse relationship between historical responsibility for greenhouse gas emissions and vulnerability to the impacts of such emissions. Moreover, climate change is the risk with the greatest potential impact on our world, according to the recent Global Risks Report of the World Economic Forum (2016).

Globalization also entails an erosion of national sovereignty. As a consequence *inter alia* of the establishment of organizations such as the European Union and the World

Trade Organization (WTO), decision-making increasingly occurs at the supranational level. As the influence of such bodies on domestic policy-making grows, the boundaries between the national and the international spheres are disappearing in various contexts. Thus, the background against which individuals play their role in the world has changed profoundly over the last decades. This raises fundamental questions regarding the ‘moral calibre’ of supranational institutions, practices and regulations, and our role in their creation and imposition. The globalized world we live in is characterized by a multitude of causal connections and these new modes of interaction seem to challenge our common sense conception of individual responsibility.

In this dissertation, we will try to answer some of these important questions generated by the process of globalization and situated at the intersection of moral philosophy (in particular global ethics) and political philosophy (in particular theories of global justice). We will focus on both individual moral responsibility and the principles and institutional conditions for the effective realization of a just society. Special attention will be paid to feasibility objections related to the successful tackling of climate change.

According to ‘cosmopolitan’ approaches to global justice, the scope of justice is global, thus principles of distributive justice should operate globally rather than merely at the level of the state. As noted by Thomas Pogge, one of the foremost writers on global justice and a proponent of cosmopolitanism:

Three elements are shared by all cosmopolitan positions. First, *individualism*: the ultimate units of concern are human beings, or persons – rather than, say, family lines, tribes, ethnic, cultural, or religious communities, nations, or states. The latter may be units of concern only indirectly, in virtue of their individual members or citizens. Second, *universality*: the status of ultimate unit of concern attaches to every living human being equally – not merely to some subset, such as men, aristocrats, Aryans, whites, or Muslims. Third, *generality*: this special status has global force. Persons are ultimate units of concern for everyone – not only for their compatriots, fellow religionists, or such like. (Pogge 1992, 48-49, footnotes omitted)

With increased communication and information access, the inequality of the global distribution of benefits and burdens is well-known to most. Cosmopolitanism requires us to acknowledge our responsibility to promote global justice, to reduce those inequalities.

Some ‘realist’ critics, however, argue that cosmopolitan global justice is infeasible; thus states should focus on advancing their national interest and should not seek to advance the standard of living of non-nationals. In this dissertation we will assess the most commonly invoked ‘infeasibility’ arguments relating to both the *individual* and the *institutional* levels. We will investigate the nature and effects of barriers of *motivation* at

the individual level (in particular conceptions of individual responsibility), the *institutional* conditions required for an effective promotion of global justice, and the interactions between these levels.

The questions that are central to this dissertation are:

How should we conceptualise global justice?

How does globalization affect (i.e. increase or decrease or change the nature of) the moral responsibilities of individual agents?

Is the lack of motivation at the individual level to tackle climate change really insurmountable?

Should considerations of institutional feasibility affect the responsibilities of the individuals that shape these institutions?

Can an institutional cosmopolitanism help to overcome the feasibility objections at the level of the individual moral agent?

The main aim of this dissertation thus is to assess to what extent feasibility considerations should affect the responsibilities generated by the process of globalization, with climate change as our focal point.

1.1 Globalization and global justice

What is global justice?

The first question we will address in this dissertation is what global justice exactly means. Traditionally, theories of global justice are classified under one of three general conceptions: political realism, the morality-(or society-)of-states, and cosmopolitanism (Beitz 1979). Political realism has a long tradition in the discipline of International Relations. It has been the standard view for many years. Realism can be considered to be the complete opposite of idealism and hostile to utopianism (Caney 2005, 7-8). Morality thus has no place in international relations, which inspired Darrel Moellendorf to equate

political realism to ‘politics without morals’ (2002, 143). In contrast to political realism, proponents of the so-called society-of-states approach, such as Terry Nardin (1983) and John Rawls (1999), believe that morality does have a place in the international realm. However, they consider the moral rules governing this realm to be different from those governing the domestic sphere. What we owe to our compatriots is fundamentally different from what we owe to distant strangers. In contrast, cosmopolitans claim that moral obligations and considerations of justice are global in scope. They attach little (or sometimes even no) ethical significance to national boundaries. This is significantly different from the position of political realists, who claim that morality has no place in the international realm, but only governs domestic affairs. It also differentiates cosmopolitans from society-of-states proponents and nationalists, for whom borders or national boundaries are very important in delineating moral obligations.

In chapter 2 we will provide an overview of the key arguments in this debate between realists, society-of-states proponents (and nationalists), and cosmopolitans. We will dismiss political realism as a kind of scepticism, both on empirical and ethical grounds. Realism thus should not be considered to be a *moral* position. The society-of-states approach, in contrast, is a moral position. Proponents of this approach argue that our obligations towards our compatriots differ fundamentally from our obligations towards distant strangers. We will critically assess the most important arguments that are invoked to explain this difference. In other words, we will evaluate answers to the famous question: ‘What magic is there in the pronoun ‘my’ that should justify us in overturning the decisions of impartial truth?’ (Godwin 1971 [1793], book 2, chapter 2). Two kinds of reasons are commonly used to justify giving priority to one’s compatriots, namely efficiency or some intrinsic feature or independent moral force inherent to sharing a nation, state, or community. We will dismiss the efficiency argument as ethically unsound, given the huge inequalities that characterize our current world. The claim that some relationships have intrinsic value and that this implies that they generate special responsibilities cannot be so easily refuted. However, as the process of globalization intensifies, it seems to put further pressure on the priority thesis defended by the society-of-states proponents.

Cosmopolitanism seems better suited to these changing background conditions. Cosmopolitans like Pogge (1992; 2008) have shifted the focus from the level of the state to include international institutions. However, cosmopolitans have divergent views on what exactly constitutes ‘global justice’. More specifically, their disagreements concern the reason *why* moral duties should apply globally, *what values* or which goods need to be promoted, and *to what extent*. In the second section of chapter 2 we will discuss the similarities and differences between the most prominent variants of cosmopolitanism. Special attention will go to utilitarianism, a contractarian account, a needs-based account, the capabilities approach, a Kantian account, and a rights-based account of

cosmopolitanism. We will conclude this chapter by developing our own position in the debate.

Our starting point will be the fact that there exists reasonable disagreement about what justice exactly entails. A complicating factor here is that judgments about reasonableness are (to some extent) normative in kind, and consequently potentially controversial (Valentini 2010a, 8). However, we believe that the idea of reasonable disagreement is not unintelligible. Laura Valentini summarizes it as follows: ‘when disagreement is reasonable, none of the parties involved can be accused of being irrational or obviously mistaken’. As a consequence, their views merit to be taken seriously (Valentini 2010a, 9). Christopher McMahon (2009, 19) expresses a similar point: ‘Disagreement is reasonable when the relevant considerations are such that competent engagement with them is compatible with the reaching of different conclusions’. Characteristic for reasonable disagreement thus is that none of the contending positions can be reasonably rejected (Gutman and Thompson 2004, 28; Scanlon 1998, 153). Disagreements of this kind are omnipresent in the realm of politics. Citizens hold divergent views on policies regarding taxation or the welfare system, for example. When we turn our attention to the international level, the disagreement about justice appears no less pervasive:

It is hard to deny that many reasonable and reflective people disagree about which principles of distributive justice, if any, should apply at the global level. Given this it seems unreasonable simply to state that political institutions should be designed to best realise the correct principles of distributive justice. (Caney 2009, 116)

How should we deal with this situation? Faced with reasonable disagreement with regard to different conceptions of global justice, how should we proceed? Valentini claims that the principle of equal respect should play an important role in this context. This principle requires that the implemented institutional arrangements are justifiable to everyone affected by them. She illustrates this claim using the example of tax reform (Valentini 2010a, 17-18). Some citizens might defend a reform based on the difference principle, claiming that the distribution of income and wealth should always benefit the worst-off. However, other citizens might hold different, yet equally reasonable, views;

[...] under circumstances of deep reasonable disagreement, we cannot unproblematically assume that this [the difference principle] is what equal respect for persons *actually* requires. Some may reasonably hold this view, but others may equally reasonably believe that respect for persons has different distributive implications. Under such circumstances, we cannot take ourselves to *respect* others

if we simply impose our views on them. To do so would be to fail to recognize their status as equal rational and autonomous agents. (Ibid.)

We agree with Valentini (2013) that reasonable disagreement, together with the notion of equal respect, makes it very difficult to justify demanding conceptions of global justice. She concludes that the only moral imperative that can be defended is to protect a set of fundamental rights (2013, 100). This conclusion is not uncontested, yet gains significant strength when we accept that duties of justice generate ‘rightfully enforceable entitlements’ (Valentini 2013, 94). These entitlements may thus be enforced without wrongdoing, even if people are not sufficiently motivated to comply. As this is a defining feature of duties of justice, deciding which duties are to be considered duties of justice requires caution. Especially when we are faced with reasonable disagreement, the principle of equal respect implies not to impose your conception of the good on others.

Juha Räikkä (1998) has discussed the moral costs that can be caused by the implementation (or imposition) of certain ideals. He argues that we should pay attention to the moral costs of changeover, since avoiding these costs might turn out to be more important than achieving the ideal suggested by the theory (1998, 35). In this context he refers to John Rawls (1987, 4), who argues that full agreement on the demands of justice can only be achieved under a totalitarian regime.

The point is that certain ideals (and theories supporting them) should be rejected, not only if it is literally impossible to implement the ideals, but also if in practice it would necessarily be too costly to implement them. Implementing certain ideals would necessarily violate the value of pluralism, or would require “oppressive use of state power,” and this is why these ideals should be rejected as unjustified. (Räikkä 1998, 35)

We need not endorse Rawls’ strong claim that full agreement on justice can only be achieved through oppressive use of state power to acknowledge that imposing a demanding conception of the good on people that reasonably disagree with this conception involves unjustifiable moral costs (such as contradicting the will of the people)¹. Therefore, we agree with Valentini that only respect for a set of basic rights can

¹ ‘Why do political theorists generally think that the ideals they defend should not be carried out, even if possible, if those ideals blatantly contradict the will of the people? Because they see that the moral costs of changeover - the rejection of democratic procedures - would be so serious that implementing the ideals is unjustified. So in that case there is a moral reason (a respect for democracy) to think that the morally justifiable ideals should not be implemented’ (Räikkä 1998, 39). We want to emphasize that this moral cost should only be

be justifiably imposed as a conception of justice. This comes very close to the minimal rights-based position defended by Pogge and Simon Caney, characterized by their prioritizing of negative human rights. This position thus can be ‘adopted from within a wide variety of different conceptions of the good and ethical worldviews’ (Caney 2010, 169). Because this position is a *moderate* (allowing special obligations) and *weak* (not arguing for global equality) form of cosmopolitanism, it will not face as much opposition as extreme and strong accounts. Since the modest premises of this minimalist normative position cannot reasonably be refuted,² whatever conclusions we can derive from them will be very difficult to reject. In a similar vein as Pogge we thus grant that there only are duties to *respect* basic human rights, not to promote them. In chapter 3 we will examine to what extent we are currently meeting our minimal obligations within the globalized world.

It is important to note here that we do not *ground* this minimalist position on considerations of feasibility. The fact that this position is widely acceptable heightens its chance of being successfully implemented, but this is not the reason why we defend it. Even if people would not be motivated to fulfil their obligations under this minimal conception, these obligations would not lose any normative force. In determining the duties of justice, motivations should be disregarded, otherwise agents would be let off the moral hook too easily; ‘The fact that a person won’t do something isn’t enough for us to retract an imperative that she ought to’ (Lawford-Smith 2013, 254). However, we do believe that a valid theory of justice ‘should not contain requirements that are altogether beyond human reach’ (Valentini, 2010b). Since reasonable disagreement about justice seems to be a persistent feature of human existence, Valentini concludes that justice can only command respect for basic human rights.³ We will elaborate our position further in chapter 2.

taken into consideration if the disagreement is reasonable. The will of the people should evidently be overruled if the majority of a society wants to implement a racist policy, for example. We will discuss the possible tension between democracy and justice in depth in chapter 7.

² We believe that violating people’s basic human rights is irreconcilable with meeting the demands of the principle of equal respect. We will take the active violation of negative human rights as our *baseline* for determining harm and injustice.

³ Through the use of the concept ‘beyond human reach’, feasibility seems to creep back in through the back door. However, we need to distinguish between principles and the question of their implementation (Barry and Valentini 2009; Cohen 2001); ‘It is ways of implementing principles in the world that are feasible or infeasible, not principles themselves’ (Gilbert and Lawford-Smith 2012, 811). What is considered to be ‘beyond human reach’ thus is the full and free agreement on principles of justice, not the motivation to comply with the corresponding obligations of justice.

Has globalization changed our responsibilities regarding global justice, and if so, how?

The second question we will address in this dissertation is whether the process of globalization has changed our responsibilities, and if so, how (chapter 3)? Our starting point here will be that since the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in 1948, many of these human rights still remain unfulfilled. Using the framework of the ‘responsibilities approach’ to human rights, as developed by Kuper et al. (2005, ix-xxii), we will examine how this situation came about. The central question in this approach is ‘who must do what for whom’? If we fail to identify the agents that bear the counterpart obligations that arise from human rights, we are at risk of emptying the human rights discourse of any meaningful content. To avoid this risk, we need to allocate these responsibilities in an ethically justified way. The process of globalization has complicated this important task significantly.

Traditionally, a distinction is made between negative rights (understood as rights to *noninterference*) and positive rights (conceived of as rights to *assistance*). A corresponding distinction is made between negative duties of noninterference and positive duties of assistance (Cruft 2005, 29-30). Although criticized (Shue 1980), we agree with Samuel Scheffler (2001, 39) that this distinction remains one of the important hallmarks of our common sense conception of individual responsibility. People do feel more responsible when they have contributed to the harmful situation that needs remedying, than when they have merely failed to prevent it. We will apply this distinction to the human rights approach, arguing that our first and foremost duty is to avoid the active violation of negative human rights. Following Pogge (2008, 25), we will take this conception as our baseline for determining harm and injustice. In other words, if one violates people’s human rights, one is clearly harming those people.

Another common sense distinction is made between general and special obligations. *General obligations* are obligations we owe to everyone equally, on the basis of our common humanity. For example, we all bear the general obligation not to interfere negatively with another person. However, our general obligations do not seem to imply respect for *positive* human rights. We do not assume that it is our obligation to ensure that everyone’s human rights are actively fulfilled. Our general positive duties of assistance seem less stringent and more problematic, especially from a motivational perspective. Moreover, we face the difficulty of assessing *who* should bear those responsibilities, if we do not want to make the human rights discourse void of meaning. This difficulty is known as the ‘allocation problem’.

Special obligations, in contrast, are owed only to some specific subset of persons with whom we have a special relationship, i.e. we do not bear them for everyone equally. We

feel we owe more to our family, friends, or even compatriots, than to distant strangers. In addition to the negative duties of noninterference we owe to everyone equally, we *also* feel that we owe duties of assistance to the members of that subset. These special positive obligations are generally considered to be less controversial than general positive obligations. Few people would deny the existence of such special positive obligations and fulfilling them appears to be common practice.

The allocation problem thus seems especially relevant with regard to general positive obligations, as grounding (enforceable) positive duties on our common humanity seems to be quite problematic. In chapter 3, we will examine whether *harm* should be used as the criterion to solve this allocation problem. As mentioned above, we take the active violation of negative human rights as our *baseline* for determining harm. We believe that if one violates someone's human rights, one is, without any doubt, harming that person. This corresponds to the minimalist position we defend in chapter 2 as our conception of global justice. In chapter 3, we will examine how this conception affects the obligations we bear within our current globalized world. In other words, we will examine whether we are violating the human rights of distant others through our role in the process of globalization.

We have already mentioned that our obligations seem to be more stringent when we stand in some causal relationship to some other(s), including distant others. Christian Barry elaborates on this intuition in his formulation of a 'contribution principle'. This principle is based on the distinction between doing something and failing to prevent it. He considers the fact that we contributed to something to be 'a normative factor of special significance for determining whether and to what extent [we are] responsible for addressing it' (Barry 2005, 107). This means that our obligations become more binding if they are the result of our own previous conduct. If we are violating the human rights of distant others through our role in the process of globalization, we cannot dismiss the corresponding obligations as 'charity'. Through the act of harming, we acquire a special relationship with the people whose human rights we violate and we bear responsibility towards them, regardless of whether or not we actually value this relation. Harming someone thus seems to be a very strong reason to value a relationship.

After elaborating this theoretical framework in depth, we will apply it to two specific aspects of the process of globalization, namely climate change and the global economic order. In this way, we will examine whether or not we are harming people through our role in these aspects. We will argue that, concerning the economic order, the data are not entirely conclusive. Whether or not we are harming distant others through upholding the global economic order, seems to depend on the specific benchmark to which we compare the current situation. We will discuss three possible benchmarks, namely the past, a counterfactual reference, and a benchmark of fairness (Risse 2005). After establishing that

only the historical benchmark provides a meaningful point of comparison, we face another difficult question: should we use relative or absolute numbers to inform this historical benchmark? Our answer to this question seems to determine whether or not we are harming distant others through upholding the global economic order. So how should we proceed in this case?

Concerning the second aspect of globalization we will discuss, climate change, the harmful relation is more difficult to deny. We will argue that climate change should be characterized as a violation of negative human rights, including the right to life, the right to health, and the right to subsistence (Caney 2010; Bell 2011, 100). In the climate case, doing nothing to improve the status quo seems to worsen the situation of distant others and to violate their human rights. Through our part in the process of climate change, we thus seem to violate the human rights of a specific and large subset of persons. Consequently, we bear a special responsibility towards them, irrespective of whether or not we actually value this relationship.

We will end chapter 3 with a plea for caution. Since whether or not something is considered a harm determines the status of the corresponding positive duties and, consequently, their normative force, grounding our special responsibilities on such an all or nothing mechanism seems imprudent. The globalized context we live in is characterized by a multitude of causal connections and a diffusion of responsibilities, as Scheffler has pointed out (2001, 38-40). Therefore, in demanding indisputable evidence of harm, we might be attaching too much importance to the demonstrability of harm. The danger exists that people are left to fend for themselves because they are unable to prove beyond any doubt that they are being harmed. We believe Barry's 'vulnerability presumption principle' can and should play an important role in this regard. This principle urges us to use standards of proof that express a willingness to err in favour of the most vulnerable when determining whether or not there is a relationship of harm. It strengthens our account of characterizing the positive duties of mitigating climate change as special obligations of justice. With respect to the global economic order, however, the vulnerability presumption principle could inspire us to interpret the historical benchmark in absolute numbers, thereby accepting the resulting special obligations of justice.

Case study: The Health Impact Fund

In chapter 4 we will conduct a case study, focusing on the global governance regime designed to regulate intellectual property rights and the Health Impact Fund. We believe this case study provides a clear illustration of the possible tension between globalization and the fulfilment of human rights. Whether or not poor people in developing countries

have access to essential medicines is to a large extent determined by the relevant global governance institution, namely the WTO. We will explain below how the policies implemented by this institution can have such a devastating effect on the health of millions of people. Important to note here is that this case is just one of countless examples of the way in which globalization erodes national sovereignty. It is just one specific aspect of the more general process of globalization. Decisionmaking increasingly occurs at the supranational level and the influence of global governance institutions such as the WTO on domestic policy-making should not be underestimated. This development gives rise to important ethical questions, e.g. regarding our role in the creation and imposition of global governance regimes. The global governance regime designed to regulate intellectual property rights results in the violation of basic human rights. To the extent that the policies of the WTO are controlled by democratic governments, the responsibility for this violation is shared among them. Consequently, the citizens of these democratic countries become complicit in the resulting violations of basic human rights. As citizens, they acquire an obligation of justice to reform the global governance regime in a way that would end or at least minimize these violations.

The starting point for this chapter is the lack of access to essential medicines that more than a third of the world's population experiences. More than half of this group of people lives in the poorest regions of Africa and Asia.⁴ A first explanatory factor is the concept of the so-called '10/90 gap' – i.e. less than 10% of the total health-related R&D is devoted to the major health problems representing 90% of the global disease burden.⁵ This concept has become widely accepted in theoretical analyses of the problem, but those who suffer from the conditions in question see little change.

The problem of inadequate innovation to tackle certain diseases (for example African trypanosomiasis, leishmaniasis, and Chagas disease) is the logical consequence of the law of supply and demand. While the US, the EU and Japan together represent only 15% of the world population, they make up 87% of the global pharmaceutical market. As a result, pharmaceutical companies tend to invest in R&D for medicines which are effective against diseases or ailments suffered by a large number of patients in industrialized countries who, directly or through health insurance or national health systems, can afford to pay prices far beyond the capacity of the average citizen of developing world

⁴ See www.who.int and data from Médecins Sans Frontières (website of the campaign for access to essential drugs: www.accessmed-msf.org).

⁵ See <http://www.globalforumhealth.org>. For a critical discussion of the 10/90 gap, see <http://who.int/intellectualproperty/submissions/InternationalPolicyNetwork.pdf> and <http://www.bjmp.org/content/global-health-and-1090-gap>.

countries. Accordingly, R&D of medicines to treat diseases affecting predominantly or only the developing world is severely neglected.

However, next to problems of innovation, problems of accessibility also play an important role. Here we will focus our attention on the operation of the patent system. As the risks and costs of drug development are indeed very significant, pharmaceutical companies need a reasonable chance of recouping their investment, generally through sales at a considerable profit facilitated by patent protection. In the past, however, the patent laws of many countries did not permit drug substances as such to be patentable, only processes for preparing them. In this way, it was possible to “design around” such process patents, i.e. to invent alternative, non-infringing processes. Consequently, pharmaceutical companies could still produce cheaper, generic, copies of new medicines. A large proportion of the medicines sold in Africa were produced in this way by Indian companies for example.

This situation changed in 1994, when an Annex was introduced in the *Marrakesh Agreement establishing the World Trade Organization*, which required all countries which would be party to the World Trade Organization to permit patenting of drug substances as such. This Annex, the Agreement on Trade Related Aspects of Intellectual Property, better known as the TRIPs Agreement (WTO 1994), means that in future the ability of generic pharmaceutical companies to sell affordable copies of new medicines will be severely restricted. With regard to essential medicines, this condition was not strictly enforced, as the example of India – the ‘pharmacy of the world’ – illustrated. However, in 2005 India was forced to comply with the trade agreements and thus to allow and enforce patents, even for essential medicines.

Several suggestions for addressing the lack of access to essential medicines have been made in the recent past and some are already in place. We will discuss earlier proposals that focus on different actors, namely the governments of the country whose citizens suffer from the disease in question, ‘big Pharma’, and academia and/or public research institutes. Next, we will assess the most important solutions proposed until now, including: (a) limiting patent protection; (b) compulsory licensing of patents; (c) voluntary licensing of patents (including patent pools); (d) parallel inducement; (e) orphan drug protection; (f) supranational funding of R&D; (g) advance market commitments; and (h) prizes. We will briefly comment on each of these schemes.

In the remainder of chapter 4, we will discuss the Health Impact Fund (HIF). The HIF, as recently proposed by Thomas Pogge and Aidan Hollis, is essentially a supranationally-funded prize system intended to address the problem of affordable access to new medicines for diseases primarily affecting developing countries (Hollis & Pogge 2008). As it is currently designed, the HIF involves a supranational body, majoritatively funded by

developed countries, paying an annual prize for up to ten years to a company bringing a new medicine to market. The size of the payment will be a reflection of the reduction in global health burden attributable to the use of that medicine and with the medicine being sold at a pre-agreed and hence affordable price.

As the HIF is a potentially game-changing idea, it has been severely criticized from different sides. For example, its potential impact on the generic pharmaceutical industry has inspired considerable debate. Moreover, the HIF has been criticized for problems resulting from its linkage with patents and problems arising from the obligations HIF registrants must accept. On the one hand, the HIF thus faces criticism for not doing enough to bring down the price of essential medicines, whilst on the other hand, it is said to be infeasible for not being attractive enough for the pharmaceutical companies. Other hurdles that the HIF must overcome have to do with the calculation of the health impact of the registered medicines and with the security of its funding.

Although the HIF faces some considerable difficulties, two original aspects seem to make this proposal more attractive than the competing proposals we will discuss. The first aspect is the expected motivational power of the reward with regard to innovation. The second aspect concerns the potential solution that the HIF might provide for the ‘last mile’ problem. Since the HIF reward depends on the measured health impact of the registered medicine on the global burden of disease, pharmaceutical companies have a strong incentive to make this impact as high as possible. Since their profit no longer solely depends on their sales figures, pharmaceutical companies might be persuaded to tackle some of the problems that undermine the full potential of their registered medicines.

1.2 Feasibility objections

In the first part of this dissertation, we will thus try to answer the questions of what global justice is and how the process of globalization has changed our responsibilities in attaining it. In the second part, we will turn our attention to feasibility objections suggesting that cosmopolitan justice should not be strived for because it cannot be attained. There are several aspects relating to the concept of (political) feasibility and it is consequently used in many different ways. We will here use the conceptual exploration of feasibility by Pablo Gilabert and Holly Lawford-Smith (2012) to explain how we understand this concept and exactly which feasibility objections we will examine. Gilabert and Lawford-Smith (2012, 812) distinguish two important functions of feasibility, namely (1) ruling out certain political proposals because they cannot be implemented in

practice and (2) enabling comparative assessments of different proposals. They argue that there is a spectrum of constraints that determine to what extent a certain proposal is feasible. At the one end, there are logical and nomological constraints, at the other end, they mention physical, economic, institutional and cultural constraints, next to psychological and motivational constraints (Ibid., 813). They call the first kind ‘hard constraints’, as these will always remain in place. They are crucial with regard to the first function of feasibility, namely ruling out certain proposals (binary feasibility). The second kind are ‘soft constraints’, as these do not rule out certain outcomes, but rather make them comparatively less feasible (scalar feasibility) (Ibid.).

We believe hard constraints are less interesting from the perspective of moral and political philosophy, since they are by definition permanent. Our focus here will be on two soft constraints, namely motivational and institutional constraints, respectively at the *individual* and at the *institutional* level. At the level of the individual moral agent we will try to answer the questions as to what the potential barriers to feasibility are in this context, and whether we might be able to overcome them. More specifically, we will examine the feasibility objection that our moral judgment system is unable to identify climate change as an important moral problem and whether this explanation can exonerate us from individual responsibility. We thus want to answer the question whether our lack of motivation to tackle climate change really is insurmountable? If so, this feasibility objection might put significant pressure on our common-sense practice of treating the individual agent as the primary locus of responsibility in this context.

At the institutional level, we will identify the relevant problems and examine how considerations of institutional feasibility should affect the responsibilities of the individuals that shape these institutions. In this context, we understand feasible to mean ‘with a realistic chance of being implemented’. We will examine whether the current arrangement under the UNFCCC can be said to be the best feasible option and what this might imply for its legitimacy, and for our responsibilities in this context. Moreover, we will investigate specific soft constraints inherent to the democratic institutions involved in the tackling of climate change that jeopardize the implementation of a stronger climate policy. We will also discuss possible solutions to break the current deadlock.

In this second part we will take the case of climate change as our focal point. As we will argue in chapter 3, we are in fact harming distant others through our role in the process of climate change. In this way, we acquire a special relationship with a very large subset of persons. Consequently, we bear a special responsibility towards them, irrespective of whether or not we actually value this relationship. As this aspect of globalization presents a more clear-cut illustration of harm than upholding the global economic order, we decided to examine the feasibility objections that are invoked in this context.

The level of the individual

The most commonly invoked feasibility objection at the level of the individual moral agent is that cosmopolitan justice will necessarily remain unfeasible in view of the nature of human beings. Samuel Scheffler has done important work on the implications of globalization for the common sense conception of individual responsibility (Scheffler 1995, Scheffler 2001). He claims that this common sense conception significantly limits our individual responsibility as it is ill equipped to deal with the new and complex modes of interaction that characterize our globalized world. Our moral judgment system is thus said to be inadequate to cope with so-called 'New Harms' (Lichtenberg 2014, 74):

The model of harm underlying the classic formulation of the harm principle – discrete, individual actions with observable and measurable consequences for particular individuals – no longer suffices to explain the ways our behavior impinges on the interests of other people.

In chapter 5 we will examine whether this claim can be invoked to explain the motivational gap regarding climate change. The starting point will be the fact that although climate change jeopardizes the fundamental human rights of current as well as future people, current actions and ambitions to tackle it are clearly inadequate, which indicates a lack of motivation. The predominant explanation for this motivational gap refers to the inability of the conventional moral judgment system to identify climate change as an important moral problem. Both in the literature and popular opinion, there are persistent doubts about the *agency* of individual emitters in tackling climate change – providing an important explanation for the fact that ethical and political analysis has mostly focused on the role of nation-states and international institutions. We will examine the legitimacy of these doubts and argue that emitters should acknowledge moral responsibility for the contribution of their avoidable emissions to the harmful effects of climate change (Caney 2009, 179; McKinnon 2012, 100; Vanderheiden 2008, 72). We will illustrate our claim using the examples of energy and meat consumption.

After discussing the alleged lack of agency of individual emitters, we will tackle the motivational problem from another angle, namely moral psychology. We will argue that the 'agency-argument' is incomplete, since it disregards people's ability to psychologically reconstruct a problem in order to reduce its urgency or minimize perceptions of their own contribution to it. In fact, the complexity of problems such as climate change precisely provides the necessary latitude for people to employ strategies of moral disengagement, enabling them to dissociate self-condemnation from harmful conduct.

We will examine the different *mechanisms of moral disengagement* that people deploy in the context of climate change. These processes enable people to engage in activities that serve their self-interest, but violate their moral standards by inflicting harm, without having to face the restraints of self-condemnation (Bandura et al. 2001, 126-7). A first set of strategies of moral disengagement is related to reprehensible conduct. We will discuss social and moral justification, advantageous comparison, and euphemistic labelling. A second set of mechanisms of moral disengagement focuses on injurious effects, namely denial and minimizing of consequences and discrediting evidence of harm. A third set operates at the intersection between reprehensible conduct and injurious effects. We will discuss diffusion and displacement of responsibility, two potent dissociative practices that operate by obscuring the relationship between actions and the effects they cause, minimizing an individual's agentic role. We will examine the use of these mechanisms in the political context in chapter 6. The final mechanism of moral disengagement focuses on the victims of the harmful conduct. In an attempt to dismiss their suffering as irrelevant, they are divested of the qualities that make them human.

We will not deny that climate change poses a serious challenge to our moral judgment system, due to its inherent complexity – including the perceived social acceptability of greenhouse gas emitting activities, the remaining scientific uncertainties, and the collective action involved. However, we argue that moral disengagement is also an important explanatory factor for the existing motivational gap. As moral disengagement reduces the dissonance or inconsistency between personal or societal moral standards and the pursuit of self-interested desires that would conflict with these standards (Stoll-Kleemann et al. 2001, 111), it thus allows emitters to maintain a consumptive lifestyle and to emit greenhouse gases, without having to accept moral responsibility for the resulting climate-related harms.

In the remainder of chapter 5 we will make some tentative suggestions for tackling moral disengagement and addressing the motivational gap.

The institutional level

After focusing on the level of the individual moral agent, we will then turn our attention to the institutional level. As mentioned, we will identify existing problems and examine how considerations of institutional feasibility affect the responsibilities of the individuals that shape these institutions. More specifically, we will discuss the institutions involved in the tackling of climate change, namely the United Nations Framework Convention on Climate Change (UNFCCC), the states (and politicians) that constitute this institution (the Parties to the UNFCCC), and the citizens of these states.

In chapter 6 our starting point will again be the fact that although climate change represents one of the most serious and far-reaching challenges facing humankind in the twenty-first century, the response to it is nevertheless characterized by inadequate action at all levels. We will already have assessed some of the arguments that are invoked to explain this inaction, yet will here focus on one argument in particular, namely that addressing climate change is exclusively the job of *others* – primarily the government and supranational institutions. More specifically, we will assess the explanation for the ubiquitous inaction that refers to the delegated authority model (Gardiner 2011). This model underpins the legitimacy of political institutions and their leaders, depending on their ability to solve problems that are difficult to address at the individual level. Since the institutions created to tackle the significant threat climate change poses to basic human rights fail to do so, their legitimacy is seriously questionable.

We will start this chapter by examining how climate change affects human rights. Our framework will be the normatively minimalist conception of justice we have outlined in chapter 2. We will demonstrate that even if we use this limited list of key rights (the right to life, the right to health, and the right to subsistence, understood as negative rights), anthropogenic climate change clearly fails to respect them (Caney 2009; 2010).

Since the violation of basic human rights counts as a clear instance of injustice, this situation is in urgent need of remedying. However, as people often feel powerless when facing challenges of this proportion, they tend to turn to the institutional level for solutions. This idea is at the core of the *delegated authority model*, which underpins the legitimacy of political institutions and their leaders, depending on their ability to solve problems that are difficult to address at the individual level. But what if the delegation of responsibilities has failed to be successful, as in the case of climate change? What does this imply for the political leaders and current institutions that have assumed the mantle of responsibility and have acted as if they were capable of discharging this role (for example, by making speeches, promising progress, and organizing frequent meetings under the UNFCCC)? Does the failure to implement a robust policy to tackle climate change necessarily imply that the relevant institution loses its legitimacy?

To assess the legitimacy of the UNFCCC, we will use the theoretical framework developed by Allen Buchanan and Robert Keohane. They propose three ‘substantive criteria’ that institutions should meet in order to be legitimate: minimal moral acceptability, comparative benefit and institutional integrity (Buchanan & Keohane 2006, 419). We will explain these criteria and assess to what extent the UNFCCC can be said to meet them. Given that the UNFCCC does not meet the criterion of minimal moral acceptability and the fact that its institutional integrity is questionable, we will argue that it can only remain legitimate if no better alternative is feasible. Consequently, the only way to save the legitimacy of the UNFCCC would be to prove that the current arrangement

really is the best feasible option. If the implemented policy turns out to be the best one available under the current circumstances, the UNFCCC would arguably be no longer blameworthy for the failure to provide a robust response to climate change. The question thus arises: how should we evaluate the options open to the UNFCCC? Is there no better arrangement with a realistic chance of being implemented under the current institutional circumstances?

More specifically, we will examine whether the failure to design a policy that respects basic human rights is due to unwillingness on the part of the political representatives or due to genuine unfeasibility. The delegation of responsibilities to tackle climate change from the individual to the collective level has obviously not led to success. However, in contrast to the general perception, we will argue that this failure should not in the first place be ascribed to the elected delegates. To a certain extent, their claim that a stronger climate policy is not feasible is justified, since their electors fail to give them a strong mandate to strive for a robust climate policy. The failure of the electorate to discharge its shared political responsibility severely limits the availability of feasible options for their political representatives to defend a robust agreement to tackle climate change.

We will end chapter 6 by discussing the implications of this failed delegation of responsibility. Our focus here will be on the implications of the current illegitimacy of the UNFCCC for us as individual citizens. In this context we will first argue that delegating responsibility to a collective level can only exonerate the individual if it is done in a consistent way; otherwise it is nothing more than blame-shifting or displacing responsibility. As responsibility is in fact not delegated to the collective level in a consistent way, most citizens of developed, high emitting countries can no longer invoke this model of political legitimacy as an excuse for the general inaction regarding climate change. Hiding behind the delegated authority model should then be characterized as a mechanism of moral disengagement (see Bandura 1999, 193-209; Bandura et al. 1996, 364; Tsang 2002, 25) through which people deny their individual responsibility in an unjustifiable way. We will argue that two strategies of moral disengagement are specifically deployed in the attempt to deny individual responsibility under a delegated authority model, namely *displacement* and *diffusion* of responsibility. Consequently, we should urgently recognize that the delegated authority model is being misused to facilitate moral disengagement and to evade responsibility for the violation of basic human rights entailed by climate change.

The second implication of the current illegitimacy of the UNFCCC is that we need to take responsibility (both individually and politically) for the failed delegation of responsibility in the case of climate change. We will discuss what this might mean in the remainder of chapter 6.

In chapter 7 we will examine other ways to deal with the illegitimacy of institutions. We will here investigate how possible conflicts between democracy and justice should be solved. People hold divergent beliefs about what constitutes the good life. They disagree about the ideal structure of society and what exactly constitutes justice. Ideally, these differences are accommodated through democratic procedures. However, there are external limits to the political authority of democracy: ‘when decisions made in a democracy are felt to be too unjust then, in the name of justice, that democratic decision may be challenged undemocratically’ (Dowding et al. 2004, 24). However, deciding when a democratic decision should be overruled by considerations of justice is no easy task and should be handled with extreme caution.

Our starting point here will be the minimalist position we developed in chapter 2, namely that justice demands respect for fundamental rights. We agree with Valentini that more demanding conceptions of global justice are difficult to justify, given the reasonable disagreement that exists about what justice exactly entails. Important to note is that the duty at issue is a duty to *respect* fundamental rights, not to *promote* them. The interpretation of fundamental rights as *negative* rights makes this a normatively minimalist position, which is widely acceptable. We will argue that the violation of such rights counts as an external limit to the political authority of democracy. The violation of basic human rights can never be justified by referring to the democratic nature of the underlying decision-making process. In cases like that, we would submit that it is perfectly justified to overrule democratic decisions by considerations of justice.

We will apply this theoretical framework to the democratic arrangements that are designed to tackle climate change. We will first explain why we think the way in which climate change is currently handled is an excellent illustration of the tension that may exist between democracy and justice. As anthropogenic climate change violates basic human rights, the political authority of the relevant democratic institutions is under great pressure, even under a minimalist conception of justice. Moreover, there seems to be a second problem that aggravates this situation. The same group of people always seems to be at the losing end of the democratic decisions regarding climate change. We are thus faced with the problem of persistent minorities or persistent losers.

The tension between democracy and justice is undeniable in this context. Yet how is it caused? Why do the democratic institutions designed to tackle climate change struggle so much to achieve their goal? We will discuss two problems of accountability that might shed some light on the matter. The first explanation is that politicians lack accountability for the future impacts of their policies, which explains their tendency for harmful short-termism (Caney forthcoming, 3). Politicians indeed seem to focus too much on the next election and to neglect the long term impacts of their policies. This short-sighted bias can have disastrous results. We will also discuss a second, complementary, explanation and

problem of accountability. Politicians do not only lack accountability for the *future* adverse effects of their policies, but also for the adverse effects their policies have on *current* people who do not belong to their own constituencies. Both factors seem to contribute to the failure to agree on a strong policy to tackle climate change. The UNFCCC, designed to put a robust policy in place, even faces a further problem, due to its procedural rules. Its requirement of consensus decision making cripples its effective functioning and aggravates the problem of persistent losers.

After clarifying how the tension between democracy and justice could be explained, we will then turn our attention to efforts to solve it. More specifically, we will propose three possible strategies for ‘making democracy just’ (Goodin 2004, 107), namely ‘role reminders’, institutional reform, and the role of litigation and courts.

The first strategy, role reminders, is to motivate people to focus more on the common good and less on their self-interested preferences, when fulfilling a political role such as voting. In this way, role reminders could urge us to fulfil our political obligation as voters. We will further examine what this mechanism might imply for the obligations of our political representatives. More specifically, we will answer the question what they need to do when we, as citizens, fail to fulfil our task?

If effective, the mechanism of ‘role reminders’ would provide an elegant solution for the conflict between justice and democracy. However, a second strategy might be necessary to break the current deadlock, namely institutional reforms. At the international level (the UNFCCC), we will advocate replacing consensus decision making by majority voting, since majority voting could prove both more efficient and more effective than the current procedure (Kemp 2014). However, the historical record of the UNFCCC and its path dependency do not give much cause for optimism. Therefore, we will also examine what could be done at the level of the individual states.

Role reminders and the proposed institutional reforms might not succeed in the ending of the violation of basic human rights. In this non-ideal circumstance, another, more drastic instrument might be justified, or even obligatory. We will end this chapter by arguing for an obligation to sue underachieving governments as a ‘last resort’ type strategy.

1.3 How to overcome the feasibility objections at the level of the individual moral agent?

In Part III we will focus on the question how the feasibility objections at the level of the individual moral agent might be overcome. More specifically, we will examine how the motivational gap to tackle climate change (as discussed in chapter 5) could be bridged.

Our starting point in chapter 8 will be Scheffler's concept of the 'phenomenology of agency' (Scheffler 2001, 38-39). According to Scheffler, this characteristic way of experiencing ourselves as causal agents consists of at least three features: acts having primacy over omissions, near effects having primacy over remote effects, and individual effects having primacy over group effects (Ibid., 39). These features roughly coincide with the dimensions along which climate change differs from a paradigm moral problem, since it is 'not a matter of a clearly identifiable individual acting intentionally so as to inflict an identifiable harm on another identifiable individual, closely related in time and space' (Jamieson 2010, 437). This is often invoked to explain why we fail to attach the moral severity of a paradigm moral problem to climate change and why it is not perceived as a problem of individual responsibility (Gardiner 2011, 41; Jamieson 2010, 436).

In this chapter we will examine whether our phenomenology of agency really is too ill-suited to deliver a moral judgment of climate change that fully captures its urgency. We will claim that climate change does in fact correspond to a paradigm moral problem in certain important respects. We therefore would argue that the predominant or exclusive focus on the omissions involved in climate change, on the remoteness of its impacts, and on the fact that its effects are the aggregate result of the actions of a number of people is deceitful. Climate change can and should rather be assessed as a matter *both* of omissions *and* acts, remote effects *and* near effects, and group effects *and* individual effects (Peeters et al. 2015, chapter 3).

We will examine whether stressing the ways in which climate change *does* in fact approximate the characteristics of a paradigm moral problem, might provide a first strategy to overcome the motivational gap. We would argue that the lack of motivation at the individual level should be tackled by enhancing people's moral judgment based on conventional moral ideas. By emphasizing that they *are* in fact harming others and acting wrongly, even measured by their own standards, we might expect to heighten their guilt and, under the right conditions, their motivation to end the harmful situation. Using arguments from justice, rather than arguments from humanity, could increase the feasibility of our minimal conception of global justice.

Although this strategy appears promising, there are some good reasons to explore possible solutions at the institutional level (Lichtenberg 2014, 67-70). Faced with a (perceived) problem of demandingness and the allocation problem, Lichtenberg argues that collectivizing and thereby institutionalizing our duties might provide a valuable way to mitigate these problems. As we will discuss in chapter 6, the greater efficacy of institutions is often invoked as justification for their existence (Gardiner 2011). The delegated authority model accordingly makes the legitimacy of political institutions and their leaders dependent on their ability to solve problems that are difficult to address at the individual level. We will examine whether the delegation of responsibilities to institutions could solve the motivational problems we experience at the individual level (partly) due to our phenomenology of agency.

Special attention will be devoted to the role politicians should play in this regard. In chapter 7 we will argue that when basic human rights are being violated, politicians can be permitted to overrule democratic concerns in order to end this situation. Moreover, politicians thus not only have permission to give priority to justice instead of democracy, they can be obliged to do so. However, the current political situation makes it very unlikely that politicians will enforce duties of justice. Given the economic and financial crisis, voters tend to emphasize the importance of their national economic interests even more, and politicians are likely to follow their lead. Moreover, we acknowledge that not everyone (e.g. libertarians) will accept that duties of justice should sometimes overrule democratic demands. In the remainder of chapter 8, we will therefore argue for an obligation that can accommodate both concerns and offers a way out of the current gridlock; *the moral obligation to nudge*.

In the final chapter (chapter 9) we will summarise the most important findings of this dissertation and discuss some overarching conclusions. We will also comment on the extent to which the different chapters have answered the research questions mentioned in this introductory chapter.

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Part I

Globalization and global justice

Chapter 2

Variants of cosmopolitanism: A realistic cosmopolitan utopia¹

2.1 What cosmopolitanism is not

Traditionally, theories of global justice are classified under one of three general conceptions: political realism, the morality-(or society-)of-states and cosmopolitanism (Beitz 1979).² Before focusing our attention on the last conception, we need to outline the former two and explain why we believe they are inadequate.

2.1.1 Political Realism

Political realism has a long tradition in the discipline of international relations. It has been the standard view for many years. Realism can be considered to be the complete opposite of idealism and hostile to utopianism (Caney 2005, 7-8). Thus, it is the approach furthest removed from cosmopolitanism.

Realists, such as Hans Morgenthau (1948) believe that the international realm is best characterized as a Hobbesian ‘state of nature’. Hobbes developed this concept to describe the hypothetical situation in which men lived before they agreed to a social contract that organized society and established some kind of government. He famously described life

¹ This chapter is based on the following article: De Smet, Andries, and Sigrid Sterckx. (2015) “Varianten van cosmopolitanisme: een realistische cosmopolitanistische utopie.” *Ethiek en Maatschappij*, 16(1-2), 69-114.

² In the new afterword of the 1999 edition of *Political Theory and International Relations*, Beitz sketches a more nuanced distinction. We will discuss this later and explain why we think the conceptualization mentioned here remains justifiable.

in this situation as being 'solitary, poor, nasty, brutish and short' (1994 [1651], 76). This state of nature is defined by 'the absence of a political authority sufficiently powerful to assure people security and the means to live a felicitous life' (Beitz 1979, 28). Given this absence, it is not rational for people to comply with moral rules, as they have no guarantee that others will do the same. Analogously, as there is no strong global government, it is not rational for states to comply with moral requirements in the international sphere. Morality thus has no place in international relations. This implies that states have no moral obligations with regard to distant strangers. A state can never be morally blameworthy with regard to its foreign policy. Darrel Moellendorf even equates political realism to 'politics without morals' (2002, 143). States are the principal actors and there are no universal principles guiding their relations. States are not only *permitted* to pursue power and their national interest³; this is what they *should* do, according to political realism.

Simon Caney (2005, 7) rightly notes that this argumentation entails two claims; an ethical one and a more empirical or explanatory one. Moreover, the empirical claim that states tend to pursue their national interest is often used as part of the justification for the ethical claim that this is their moral duty:

[...] realists sometimes argue that it would be wrong for a state not to pursue its own interests (an ethical claim) on the grounds that other states will pursue their own interests (an empirical claim) and hence that pursuing a non-self-interested policy would be likely to achieve nothing (an empirical claim) and leave the citizens of the non-self-interested state highly vulnerable (an empirical claim), a state of affairs assumed to be morally bad (an ethical claim). (Caney 2005, 7)

Caney emphasizes that these claims remain logically independent of each other; affirming one does not necessarily entail affirming the other (Caney 2005, 10). However, to the extent that realists use the empirical claim to buttress the ethical claim, they become vulnerable to criticism attacking the empirical claim. Charles Beitz tries to refute the realist position in this way by arguing that states are in fact not in a state of nature towards each other. He starts from the observation that 'a wide variety of areas of international relations are characterized by high degrees of voluntary compliance with customary norms and institutionalized rules established by agreement' (1979, 47). As states have some common interests, it is not unreasonable to expect some reciprocal compliance, even if no global authority is available to ensure this (Beitz 1979, 49).

³ This concept can be understood in both a subjective and an objective way. See Wendt (1999).

Moreover, even if the realist empirical claim were correct, arguing for an ethical stance based on an empirical fact is a clear case of the is-ought fallacy. However, realists might avoid this flaw by only endorsing the ethical claim, so we also need to address the realist position in a normative way. Beitz again leads the way by arguing that states can be justified in forgoing self-interest because that is what morality may require, even in a state of nature (Moellendorf 2002, 147).

[...] the invocation of the national interest does not necessarily justify disregard of other moral standards. What is required is a balancing of the rights and interests presumably protected by acting to further the national interest and those involved in acting on the competing principle that gives rise to moral disapprobation. While it cannot be maintained a priori that the individual rights presumably protected by the national interest would never win out in such cases, the opposite cannot be maintained either. Yet this is exactly what an uncritical acceptance of Morgenthau's view invites. (Beitz 1979, 55)

The problem here is that realists make a strong distinction between the domestic and the international sphere. States may act morally in the domestic case, but internationally their only duty is to advance their national interest, however conceived. As this distinction cannot be grounded on their empirical claim, it remains unclear how this position can be justified. Other approaches also differentiate between both spheres, so we will examine the justifying reasons below. We should emphasize here, though, that realists need to appeal to a very strong reason, as their conclusion is equally strong. Stating that there is a difference between the domestic and the international sphere, and that different moral frameworks apply to each, is one thing. Stating that morality has no place in international relations or that advancing national interest is the only moral duty of states, is something else completely.

Relying on these arguments, Beitz (2005, 16) dismisses political realism as a kind of scepticism. We agree with him that this implies that only cosmopolitanism and less extreme forms of statism are to be considered *moral* positions.

2.1.2 The society-of-states approach and its descendants

In contrast to political realism, proponents of the society-of-states approach, such as Terry Nardin (1983) and John Rawls (1999), believe that morality *does* have a place in the international realm. However, the moral rules governing this realm are different from those governing the domestic sphere. As its name suggests, the society-of-states approach takes the international society to be a 'practical association of states' (Nardin

1983, 14-15). Consequently, states (or peoples in Rawls' account⁴) are the units of ethical consideration rather than individuals, as in the domestic sphere. States, rather than persons, are the principal bearers of rights and duties (Beitz 2005, 16). The idea of state autonomy (or sovereignty) is crucial in this approach, hence the principles of non-intervention and self-determination take priority. States need to respect *some* principles in the international realm, for example respect for a minimal set of human rights, but they also have a duty of non-intervention and should respect the independence of other states. This position thus acknowledges that national borders are morally significant and that they limit the scope of our obligations. What we owe to our compatriots is fundamentally different from what we owe to distant strangers. In fact, we do not owe them anything *as individuals*. The only moral principles that apply in the international realm hold between states, peoples or societies, not between persons.

At a certain point in history, this account may have been defensible. As long as states were independent of each other, it may have been justified to give priority to the aforementioned principles. However, the process of globalization has eroded the sovereignty of states. As a consequence of *inter alia* the establishment of organizations such as the European Union and the World Trade Organization, decision-making increasingly occurs at the supranational level. As the influence of such bodies on domestic policy-making grows, the boundaries between the national and the international spheres are disappearing in various contexts. Climate change provides another illustration of the permeability of state boundaries. As with the approach of political realism, the empirical presupposition underlying the society-of-states approach is not fulfilled.

Even if this condition was met, we could still (normatively) question the priority this approach gives to those near and dear to us. In the famous words of William Godwin: 'What magic is there in the pronoun 'my' that should justify us in overturning the decisions of impartial truth?' (Godwin 1971 [1793], book 2, chapter 2). This questioning also targets forms of nationalism (Tamir 1993; Miller 2007), communitarianism (Walzer 1994) or any other theory that takes a particular group, and not individuals per se, as the unit of ethical consideration.⁵ As a consequence, the moral rules guiding our conduct

⁴ For an explanation of the difference between states and peoples, see Rawls 1999, 23-30. Caney (2005, 11-12) criticizes this distinction and argues that Rawls' position is similar to the society-of-states approach.

⁵ We discuss these theories here, because the argument is basically the same regardless of whether we target the prioritizing of states, nations or communities. These theories make a 'division of moral labor between the domestic and international levels' and that is why Beitz considers them 'descendent[s] of the morality of states' (Afterword 1999, 215). They are all 'interpretations of the morality of states' (Beitz 2005, 16).

towards compatriots are different from the rules with regard to distant strangers⁶. Why should this be justified?

In general, two kinds of reasons are commonly used to justify this focus on states (or other collective entities) and the implied priority thesis (Beitz 1979/Afterword 1999, 208-214). First, the priority thesis might be defended in an indirect way. This means that the priority we give to our compatriots would be justified by ‘considerations at a deeper level of reasoning, where everyone is treated equally in the morally relevant respect’ (Ibid., 208). According to this view, the fact that we give priority to our compatriots (and friends, families, ...) in no way contradicts our equal concern for all. What is more, giving priority might even be the best way to promote the greater good; ‘Special responsibilities are [...] assigned merely as an administrative device for discharging our general duties more efficiently’ (Goodin 1988, 685). Goodin thus uses reasons of efficiency to defend the priority thesis. Special relations, and the corresponding responsibilities, do not have intrinsic value. Goodin (1988, 678) even denies that they possess an independent existence or moral force. As they receive their moral force from the general duties, their special status has been dealt a sharp blow: ‘In this way, it turns out that “our fellow countrymen” are not so very special after all. The same thing that makes us worry mainly about them should also make us worry, at least a little, about the rest of the world, too’ (Ibid., 679). Giving priority to compatriots can thus only be defended indirectly, if it proves to be the most efficient way of promoting an intrinsic end.

Regardless of how we define the intrinsic end to be achieved, this condition will most likely not be met. Given the huge inequalities that characterize our current world, it is difficult to see how prioritizing our compatriots can be the best way to promote – for example – the greatest happiness for the greatest number:

[...] given familiar assumptions about the diminishing value of increasing income, there is no reason to think that overall value could not be increased if the wealthy were to act on a more egalitarian principle than priority for compatriots. [...] So the simple consequentialist defense is not likely to justify anything very much like the priority thesis found in conventional morality. (Beitz 1979/Afterword 1999, 210)

⁶ This discussion is a specific instance of the more general debate on general and special obligations. The former are owed to everyone equally on the basis of our common humanity. Special obligations, in contrast, are owed only to some specific subset of persons with whom we have a special relationship. We do not bear them for everyone equally. We feel we owe more to our brother, a friend, or perhaps even a fellow countryman, than to a distant stranger. We will discuss this further in chapter 3.

Beitz argues that this problem jeopardizes every theoretical defence of the priority thesis that builds on a proclaimed commitment to treat every human being equally in the morally relevant way. To maintain that giving priority to our compatriots is best for everyone, a theory would need an eccentric standard of value or implausible premises, for example an equal background distribution of natural resources and talents. Therefore, defending the priority thesis at the intermediate level is very unlikely to be successful (Ibid., 209-211).

The second way the priority thesis might be defended is at the foundational level. Here, giving priority to compatriots is justified because it has some intrinsic value *per se*, rather than because it yields the best overall result. Our special obligations are not just instances of our general ones; they possess an independent moral force. This implies that our special and general obligations might conflict. Samuel Scheffler (2001, 115) rightly notes that we are faced with a dilemma: 'Either we must argue, as Nussbaum does, that devoting special attention to the people we are attached to is an effective way of doing good for humanity at large, or else we must suppose that the people we are attached to are simply worth more than others'.

We have just attempted to explain why the first – indirect – horn of this dilemma is unable to justify the priority thesis, and will now look at the second one. Which feature of our relationship with our compatriots could possibly justify treating them as if they are worth more than distant strangers? Yael Tamir (1993) has sketched a first foundational answer to this question. She considers 'connectedness' to be the basis for our relationships and defines this as 'the belief that we all belong to a group whose existence we consider valuable' (1993, 98). As a member of a group, our self-esteem and well-being are affected by the failures and successes that occur in the context of that group. We develop a sense of mutual care and mutual responsibilities towards fellow group members and abide by a sense of justice towards them. In this way, *nationality* plays a constituting role with regard to our identity and a feeling of relatedness, which give rise to 'deep and important obligations' (1993, 99). If a relationship is constitutive of our identity, it – in itself – creates special obligations. Andrew Mason (1997, 438) emphasizes the foundational nature of this argumentation: 'these obligations are not contingent upon the role they might play in, say, promoting general well-being, or securing equal freedom, but derive immediately from the nature of the relationships involved'. Tamir takes this even further by claiming that these obligations are *independent of the normative nature of the association* (1993, 101). This means that even membership in the Mafia or a racist group gives rise to special obligations. Tamir acknowledges that these obligations can be overridden by moral obligations, but this gives rise to the question as to whether this is not an instance of Bernard Williams's 'one thought too many'? Do we really want to maintain that membership in an immoral group gives rise to genuine special obligations?

David Miller (2005; 2007) denies that all valued relationships can ground genuine special obligations. He argues that three conditions need to be met in order for special obligations to arise. Firstly, the relationship needs to be *intrinsically valuable*, as opposed to instrumentally valuable (2005, 65). This means that the relationship should not be valued exclusively for the mutual instrumental benefits it involves. Secondly, the special obligations under consideration need to be *integral to the relationship*, which means that the relationship would cease to exist in its relevant form if the corresponding obligations were not generally acknowledged; the special obligations need to be central to how the participants understand the relationship (Miller 2005, 65-66). Miller gives the example of friendship to illustrate this condition: 'You can't be somebody's friend unless you understand that this entails giving them certain kinds of priority in your life – being ready to drop what you are doing and go to them when they need you' (Miller 2005, 66). As third and final condition, Miller mentions that *the grounding relationships must not involve any injustices*. For example, being a member of a racist group does not entail special obligations towards your fellow-members. The injustice that is inherent to the group deprives it of any intrinsic value it might otherwise have had. On this point, Miller and Tamir hold divergent opinions.

We agree with Miller that not all valued relationships give rise to special obligations. We will use his three conditions to examine whether any of the proclaimed relationships can ground the priority thesis central to the society-of-states approach. Although there is considerable common ground, we need to distinguish between different views. Proponents of the priority thesis vary in which relationship they value and why.

As a first view, we already mentioned Tamir and Miller's emphasis on the importance of *nationality*:

Thus nationality is essentially a subjective phenomenon, constituted by the shared beliefs of a set of people: a belief that each belongs together with the rest; that this association is neither transitory nor merely instrumental but stems from a long history of living together which (it is hoped and expected) will continue into the future; that the community is marked off from other communities by its members' distinctive characteristics; and that each member recognizes a loyalty to the community, expressed in a willingness to sacrifice personal gain to advance its interests. We should add, as a final element, that the nation should enjoy some degree of political autonomy. (Miller 1988, 648)

We share a history, traditions, a culture and often a language with our co-nationals and this is constitutive of our identity. Therefore, according to this view, we are permitted to give them priority.

Proponents of the second view⁷, like Mason (1997), focus on the level of the *state* and our co-citizens. This difference is relevant because a state can consist of different nationalities and a co-national can live in another state. Mason argues that *citizenship*, rather than nationality, is an intrinsically valuable relationship that justifies special obligations towards fellow citizens (1997, 442). He emphasizes the importance of political equality and recognition and the opportunity to participate in the formation of the laws and policies of a state as factors that strongly influence the lives of its citizens. This account of citizenship is said to have intrinsic value:

Part of what it is to be a citizen is to incur special obligations: these obligations give content to what it is to be committed or loyal to fellow citizens and are justified by the good of the wider relationship to which they contribute. In particular, citizens have an obligation to each other to participate fully in public life and an obligation to give priority to the needs of fellow citizens. A good citizen is, in part, someone who complies with these various obligations and responsibilities, and in doing so realizes the good of citizenship. (Mason 1997, 442)

A third related, but more general, view is known as *communitarianism*. Among its proponents are political philosophers like Michael Sandel, Alasdair MacIntyre, Michael Walzer, and Charles Taylor. They argue that the rules of morality are only justifiable in relation to a particular community and the social roles that constitute it (MacIntyre 1984). MacIntyre departs from the impersonal moral standpoint and makes the case for the morality of patriotism, based on the importance that communal ties, broadly conceived,⁸ have for our sense of identity and well-being. Giving priority to fellow members of our community is thus integral to this relationship:

A central contention of the morality of patriotism is that I will obliterate and lose a central dimension of the moral life if I do not understand the enacted narrative of my own individual life as embedded in the history of my country. For if I do not so understand it I will not understand what I owe to others or what others owe to me, for what crimes of my nation I am bound to make reparation, for what benefits to my nation I am bound to feel gratitude. Understanding what is owed to and by me

⁷ Different aspects of shared citizenship can be emphasized to justify the priority thesis, for example the fact that citizens are subject to the same *coercion* by the state (Blake 2001), the *reciprocity* they owe towards each other (Sangiovanni 2007), or the *profundity* of the state for their lives (Risse 2006).

⁸ Daniel Bell (2013) distinguishes between communities of place, communities of memory, and psychological communities.

and understanding the history of the communities of which I am a part is on this view one and the same thing.

Whether the focus is on nations, states, or communities in general, the core argumentation remains largely the same. Proponents of the priority thesis all believe that the relationship under consideration is *intrinsically valuable*, that the corresponding obligations are *integral* to the relationship, and that *no injustice* is involved in giving priority to the relevant group. We will start by assessing Miller's defence with regard to these three conditions (2005, 67-71), and then examine whether this account can justify the priority thesis endorsed by all.

Regarding condition 1, Miller believes nationality has intrinsic value, besides (and above) instrumental benefits such as giving rise to a stable democracy. In brief, he argues that the burden of proof lies with the people who want to deny the significance of – actually valued – national attachments. We will not try to refute this first claim and grant Miller that his first condition is met. In the same vein, we also accept that citizenship and communal ties can have a non-instrumental, intrinsic value.

Miller also thinks that the special obligations we have towards our co-nationals are integral to our relationships with them (condition 2). Nations play an important role in organizing social justice and deliberative democracy, for example, and this would be impossible if co-nationals did not recognize special obligations towards each other. We agree that the idea of a shared nationality or citizenship would lose much of its significance if special obligations between co-members would be denied.

This only leaves the third condition (injustice) to potentially refute the priority thesis. Miller acknowledges that a world of nations will in practice be an unequal world. However, he wants to challenge the view that the fact of inequality *by itself* undermines the value of national attachments and the corresponding special obligations. Indeed, the priority thesis is often attacked precisely on this ground. Critics argue that special obligations towards compatriots are unfair with regard to the outsiders of the relevant relationships. If citizens of wealthier states are permitted or required to give priority to each other's interests at the expense of poorer people living in another state, then special obligations towards compatriots aggravate the inequality in an unjustifiable way. Scheffler (2001, 56-60) labels this counter-argument the *distributive objection*.

Whether this objection proves the priority thesis to be unjust, seems to depend on *the extent* to which we should give priority to our compatriots. In principle, there is nothing inherently wrong with special obligations to compatriots. We can even concede that the grounding relation has an intrinsic value and that these obligations are integral to this relationship. However, this in no way implies that giving priority is always justifiable.

This would only be the case if our relationship with our compatriots would be the only relationship with intrinsic value. However, our relationship with our fellow human beings also counts for something. We need not go as far as Goodin to derive our special obligations from our general ones, yet we cannot dismiss the latter as irrelevant either. How both kinds of obligations should be balanced, will be discussed below. For now, we can conclude that giving *absolute* priority to those with whom we share a nation, state, or community is unjust because it does not give our general obligations their due weight.

2.2 Cosmopolitanism

Now that we have discussed political realism and the society-of-states approach and its descendants, we can focus our attention on cosmopolitanism. We will start by explaining which features are shared by all variants of cosmopolitanism and then discuss the differences that exist between them.

2.2.1 What all variants of cosmopolitanism have in common

The first feature that all forms of cosmopolitanism share is the claim that *moral obligations and considerations of justice are global in scope*. Cosmopolitans thus attach less (or sometimes even no) ethical significance to national boundaries. This is a major difference with regard to political realism, which claims that morality has no place in the international realm, only in domestic affairs. It also differentiates cosmopolitans from society-of-states proponents and nationalists, for whom borders or national boundaries are very important in delineating moral obligations. The second feature that all cosmopolitans share is their *focus on the individual as ultimate unit of moral concern*. The competing approaches tend to focus on states, nations or other collective entities, as mentioned above. Third, cosmopolitans all emphasize the *equal moral worth of individuals*, irrespective of which groups or collectives they belong to or where they live.

Thomas Pogge has summarized these features in what has become the default definition of cosmopolitanism:

Three elements are shared by all cosmopolitan positions. First, *individualism*: the ultimate units of concern are human beings, or persons – rather than, say, family lines, tribes, ethnic, cultural, or religious communities, nations, or states. The latter may be units of concern only indirectly, in virtue of their individual members or

citizens. Second, *universality*: the status of ultimate unit of concern attaches to every living human being equally – not merely to some subset, such as men, aristocrats, Aryans, whites, or Muslims. Third, *generality*: this special status has global force. Persons are ultimate units of concern for everyone – not only for their compatriots, fellow religionists, or such like. (Pogge 1992, 48-49, footnotes omitted)

These features thus bind all forms of cosmopolitanism together and distinguish them from the competing approaches discussed above. Unfortunately, the agreement seems to end there.

2.2.2 Different conceptions of cosmopolitanism

Cosmopolitanism is a very broad umbrella term. That is why we will start by distinguishing between some major views that can all be called cosmopolitan, and then refine our focal point. The term ‘cosmopolitanism’ dates back as far as Diogenes the Cynic (fourth century BC) and the Stoics (third century BC). Here, we find its etymological roots: in ancient Greek, ‘cosmos’ means ‘world’ and ‘polis’ denotes ‘city’ or ‘state’. The Stoics thus considered themselves to be ‘citizens of the world’, without any special attachment or obligation to their particular city-state, community, or culture (Kleingeld & Brown 2014).

This idea is reflected in the *cultural* interpretation of cosmopolitanism. Here, a cosmopolitan is an open-minded globetrotter, with an aversion of parochialism and strong forms of nationalism. As this view is not concerned with normative questions regarding our global responsibilities, it falls beyond the scope of this chapter.

Another important distinction is that between *moral* and *institutional* (or political) cosmopolitanism. The idea of moral cosmopolitanism is captured in Pogge’s explanation above, namely that every person has a global stature as an ultimate unit of moral concern (Pogge 1992, 49). Institutional cosmopolitanism is focused more on the way in which this goal might be achieved. More specifically, institutional cosmopolitans examine which institutional changes are needed to the global order and whether a world state is a necessary pre-condition (Cabrera 2004). Although moral cosmopolitanism can imply institutional cosmopolitanism, this is not self-evident.

With regard to moral cosmopolitanism, Scheffler further differentiates between *extreme* and *moderate* forms of cosmopolitanism (2001, 111-130). This distinction is based on the status that one ascribes to special relationships and the corresponding obligations. For extreme cosmopolitans, our particular relationships and group affiliations can never provide an independent reason for action or generate special responsibilities. Moderate

cosmopolitans, in contrast, do not need to deny the intrinsic value of people's relationships. They only need to insist that the special responsibilities generated on the basis of those relationships must be balanced and constrained by consideration of the interests of other people (Scheffler 2001, 115). Moderate cosmopolitans can accept that there are special responsibilities that we owe to our compatriots but not to distant strangers (Scheffler 2001, 116).⁹

In this way, moderate cosmopolitanism seems to come close to certain forms of nationalism or the society-of-states approach. Indeed, Miller acknowledges that we are all cosmopolitans in this weak sense (Miller 2007, 28). However, the question arises whether it is conceptually sound to be genuinely committed to *both* moral equality and special responsibilities. Arash Abizadeh and Pablo Gilabert (2008, 359) do not think this is problematic:

Cosmopolitan egalitarianism has room for claims about the non-instrumental value of special responsibilities. What it does not have room for is the claim that special relationships provide fundamental, independent, or ultimate—that is, unconditional—moral reasons that do not need to be couched by appeal to the satisfaction of universal principles elaborating the ideal of equal treatment of all persons. [...] This does not mean that Scheffler is not on to something quite important with his critique of extreme communitarianism and extreme cosmopolitanism. Scheffler indeed uncovers genuine tensions, but these tensions exist not between cosmopolitan egalitarianism and special duties, but between various duties (both general and special) that arise from the recognition, demanded by cosmopolitan egalitarianism, of diverse basic goods (including special relationships, a basic constituent of human well-being). These are tensions within cosmopolitan egalitarianism itself.

Abizadeh and Gilabert attempt to resolve these tensions by arguing that relationships can only give rise to special responsibilities if they do not undermine or neglect the fair access of others to the basic goods that constitute their well-being (2008, 358). However, this seems to merely shift the tension to discussions about what constitutes this *fair access* and what *goods* should be considered *basic*.

According to Kok-Chor Tan, liberal nationalism and cosmopolitan global justice are mutually compatible ideals, if properly understood (2002, 431; 2005). He argues for a moral cosmopolitanism with respect for the nationalist ideals of self-determination and

⁹ Caney (2001a) makes a similar distinction between 'radical' and 'mild' forms of cosmopolitanism. David Held uses the terms 'thick' and 'thin' cosmopolitanism (2010, 78).

cultural belonging. Correspondingly, the features of nationalism need to remain within the bounds of *liberal* nationalism (2002, 445, 447). This implies that co-national partiality, or the priority thesis, can only be permissible within the boundaries of justice: 'So, liberal nationalism can be truly *liberal* only if the nationalist goals that it pursues are pursued in a world in which the duties of global distributive justice are met. [...] Committed liberal nationalists must thus also be committed cosmopolitans' (Tan 2002, 458).

Whether nationalism and cosmopolitanism really are compatible thus seems to depend on how demanding global justice is defined. In this respect, Gillian Brock (2009, 13) distinguishes between *weak* and *strong* forms of cosmopolitanism. Weak cosmopolitanism specifies as a requirement of justice that the conditions necessary for living minimally decent lives should be met universally. Strong cosmopolitanism is more demanding and aims to eliminate inequalities even when these conditions are met. Strong cosmopolitans are thus committed to a more egalitarian world than their weak cosmopolitan colleagues.

These different conceptions of cosmopolitanism (cultural/moral/institutional, extreme/moderate, strong/weak) can entail quite distinct positions. Depending on how these features are combined, these positions are either more or less compatible with the society-(or morality)-of-states approach. How compatible these competing approaches are obviously also depends on which specific conception of the society-of-states is advocated. Not all proponents of the society-of-states approach adhere to the non-intervention principle or the priority thesis to the same degree. In this context Beitz considers *social liberalism* to be the offspring of the morality-of-states with the greatest interest (Beitz 1979/Afterword 1999, 214). This conception differentiates between the domestic and the international level and allows for a certain amount of priority for compatriots. At the same time, the international community has the task of establishing and maintaining background conditions that enable domestic communities to develop and flourish (Ibid., 215). He then contrasts this social liberalism with *cosmopolitan liberalism*, which takes the prospects of persons (rather than states or societies) as fundamental. Cosmopolitan liberals thus question the special moral status social liberals accord to national community. Although these positions differ in this respect, Beitz (Ibid., 216) acknowledges that they are likely to converge on many important matters of policy in the *nonideal world*. We believe that they can converge on many points in the *ideal world* also, depending on which specific conceptions of cosmopolitanism and society-of-states (or nationalism) are considered. This possible convergence will prove to be very important when we will turn our attention to feasibility objections.

2.2.3 Different accounts of moral cosmopolitanism

In the two previous sections we discussed the features that all forms of cosmopolitanism share and provided an overview of different views that can all be called cosmopolitan. In this section we will focus on *moral cosmopolitanism* in more detail. After all, recognizing that every person has a global stature as an ultimate unit of moral concern can mean many different things. Moral cosmopolitans have divergent views on what exactly constitutes ‘global justice’. More specifically, they can disagree on the reason *why* moral duties should apply globally,¹⁰ *what* value or which goods need to be promoted, and to *what extent*. In the following six sections, we will give an overview of the most prominent variants of moral cosmopolitanism: utilitarianism, a contractarian account, a needs-based account, the capabilities approach, a Kantian account, and a rights-based account of cosmopolitanism.

2.2.3.1 Utilitarianism

The first cosmopolitan position we will discuss is utilitarianism. Utilitarianism is a consequentialist moral theory, which means that it judges an act to be right or wrong solely on the basis of its consequences. More specifically, utilitarians assess an act on the basis of the consequences it has for the happiness¹¹ of all those involved. According to Jeremy Bentham (1780), we should always promote the greatest happiness of the greatest number. In promoting this goal, everyone is to be treated equally and impartially. John Stuart Mill calls this ‘Bentham’s dictum’: each counts as one and no more than one (1987 [1863]). This emphasis on equality and impartiality remains pivotal in the work of more contemporary utilitarians like Peter Unger (1996) and Peter Singer (2002).

Utilitarianism has an intuitive appeal which explains its popularity. Most people value well-being and happiness and it seems natural to assess acts in the light of their consequences. Moreover, utilitarian reasoning seems to provide a practical tool that can

¹⁰ Brock (2013, 5) distinguishes between a humanist and an associativist / relational account. On the humanist account, moral duties should apply globally due to our shared humanity. On the relational account, something more is needed. Duties only apply between people that share a certain relationship, e.g. a global economic association. We will come back to this in chapter 3.

¹¹ Happiness can be conceived in different ways. Bentham advocated a quantitative, hedonistic utilitarianism, focusing on the amount of pleasure. Mill, in contrast, introduced a qualitative criterion and distinguished between lower and higher sensations. George Edward Moore takes this even further and advocates an ideal utilitarianism, mindful of values like beauty and love. More recently, preference utilitarianism focused on satisfying our desires. However, as what we desire is not always what is best for us, some utilitarians have advocated objective list theories. Their goal is the satisfaction of the desires that we *would* have, given that we would be fully informed and rational. Going further into these different conceptions of happiness unfortunately falls beyond the scope of this chapter.

help our decision-making, both at the personal and at the policy-making level. Nevertheless, few (if any) have ever lived their life according to utilitarian principles. Three important features of utilitarianism seem to account for this discrepancy.

The first feature has to do with the way utilitarianism resolves possible conflicts between our self-interest and the demands of morality. In that situation, moral requirements are always considered to be *overriding*. Utilitarianism demands that every action we do maximizes the total amount of happiness. As reading a book or watching a movie will not meet this requirement, these actions are wrong and should be condemned. To live one's life according to utilitarianism thus means to devote one's life to the maximization of happiness, regardless of the personal costs involved. Non-moral considerations or interests will never be more than secondary issues. This feature on its own makes utilitarianism an extreme position: '[the claim of overridingness] is such a strong claim that it is unlikely to be true, even if morality is thought of as moderate rather than stringent, and despite the difficulty in providing conclusive arguments against the claim' (Scheffler 1992, 60).

The second feature that contributes to the demandingness of utilitarianism is its emphasis on *impartiality*. More specifically, utilitarians deny that there is any magic in the pronoun 'my'. This means that we should treat everyone equally, independent of our relationship with them. Whether someone is our friend, family, or compatriot is utterly irrelevant in deciding how to treat them, which differs greatly from our common moral practice. To illustrate the impact of this feature, imagine a burning building with two persons inside. One is your wife, the other is a complete stranger. You can only save one. Who should you save? According to utilitarianism, you should save the person who will bring about the largest amount of happiness throughout her life. If this turns out to be the other person, this means tough luck for you and your wife. A utilitarian may respond that it is better, all things considered, to allow people to give priority to their special relationships, but does choosing to save your wife rather than a stranger really require a justification? As noted by Bernard Williams:

It depends on how much weight is carried by 'justification': the consideration that it was his wife is certainly, for instance, an explanation which should silence comment. But something more ambitious than this is usually intended, essentially involving the idea that moral principle can legitimate his preferences, yielding the conclusion that in situations of this kind it is at least all right (morally permissible) to save one's wife. [...] But this construction provides the agent with one thought too many: it might have been hoped by some (for instance, by his wife) that his motivating thought, fully spelled out, would be the thought that it was his wife, not that it was his wife and that in situations of this kind it is permissible to save one's wife. (Williams 1981, 18)

Utilitarianism thus denies that our special relationships have intrinsic value and that they can ground special obligations. In deciding what to do we should take everyone into account equally, whether they are our mother, wife, child or a distant stranger. This requirement seems to be unattainable in real life.

The third feature that characterizes utilitarianism has to do with its stance on supererogatory acts. These are acts that are commonly considered to be good, but not obligatory. You are praiseworthy if you perform them, but you will not be condemned if you omit them. To illustrate this category, Urmson (1958) uses the example of a soldier who jumps on a grenade to save the lives of the buddies of his combat unit. We tend to characterize this behaviour as saintly or heroic, not as morally obligatory. However, this is exactly what a utilitarian would be expected to do. According to utilitarianism, if an act is good, as a matter of principle it also is obligatory. ‘Whatever is good, ought to be done’ (Heyd 2002, 7). There is no such thing as a supererogatory act, which nullifies the distinction between duty and charity (Singer 1972; 2002, 151). If a wealthy person donates money to a charity, she is merely fulfilling her duty, not acting charitably. Moreover, if she could give more, she is no longer praiseworthy, but instead blameworthy. This seems to be completely at odds with our intuitions about such practices.

Given these three features, utilitarianism needs to be characterized as an *extreme* and *strong* form of cosmopolitanism. Our special relationships have no intrinsic value and count for nothing in grounding obligations. Moreover, we need to treat everyone equally and impartially, which implies reducing inequality as far as possible. Utilitarianism therefore is a very demanding moral theory, even more so because its requirements should always be regarded as overriding. The question then arises why we should accept this extreme position? This seems to be a consequence of our shared humanity¹² (, as opposed to the ‘associativist’ or ‘relational’ position which bases our obligations on our special relationships (Brock 2013, 5)). We are inclined to feel sympathy for our fellow human beings: ‘The idea of the pain of another is naturally painful; the idea of the pleasure of another is naturally pleasurable’ (Mill 1835, 60). This sympathy can lead to generalized benevolence, which means we are no longer focused on our own happiness, but strive for the happiness of humanity at large.

Given the current state of the world, this conception might seem somewhat naïve. Mill admits that sympathy in itself will often fail to motivate people to act morally. To successfully motivate a utilitarian lifestyle, this feeling needs to be cultivated. Even if we grant that this is *possible*, we can still question whether it is *desirable*. As we have seen,

¹² Some utilitarians argue that we should include all sentient beings into our moral framework, not only humans. See, for example, Singer’s *Animal Liberation* (1975).

living a utilitarian life seems to involve very high personal costs. Again, Williams aptly describes the problem:

It is absurd to demand of such a man, when the sums come in from the utility network which the projects of others have in part determined, that he should just step aside from his own project and decision and acknowledge the decision which utilitarian calculation requires. It is to alienate him in a real sense from his actions and the source of his action in his own convictions. It is to make him into a channel between the input of everyone's projects, including his own, and an output of optimific decision; but this is to neglect the extent to which his projects and his decisions have to be seen as the actions and decisions which flow from the projects and attitudes with which he is most closely identified. It is thus, in the most literal sense, an attack on his integrity. (Williams 1973, 116-117)

Shelly Kagan has tried to refute this argument from integrity in *The Limits of Morality* (1989). He argues that our common, restrictive conception of morality cannot be justified. Moreover, only people who comply with the genuine demands of morality, however excessive, can be said to live a life of integrity. We will return to such considerations of feasibility below. For now we will conclude that utilitarianism, which is an *extreme* and *strong* form of cosmopolitanism, turns out to be a very demanding position.

2.2.3.2 Contractarian accounts of cosmopolitanism

Whereas utilitarianism derives our responsibilities from our shared humanity, contractarians argue that something more is needed. They believe that moral norms derive their normative force from the idea of a contract or mutual agreement (Cudd 2013). Yet how can we decide which principles of justice are fair and should be adopted?

John Rawls

In *A Theory of Justice* (1971) John Rawls tried to answer this question *for the domestic sphere*. He considers society to be a system of social co-operation which produces both benefits and burdens. The principles of justice are needed to distribute these benefits and burdens in a fair way and to outline the basic structure of society. Central here is the idea of an 'original position', i.e. a hypothetical situation designed to arrive at a fair agreement as to how society should be arranged. A defining feature of this position is that none of the participants knows his or her exact position within the society:

... no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like. I will even assume that the parties do not know their conceptions of good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of fair agreement or bargain. (Rawls 1971, 12)

Rawls argues that we would opt for the liberal values of equality and freedom to structure our political and social institutions.¹³ More specifically, the *first principle of justice* is to assure equality regarding basic freedoms: 'Each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others' (Rawls 1971, 60). This principle thus focuses more on the political constitution and the equal status as citizens, by emphasizing freedom of speech, assembly, conscience, and the like. The *second principle of justice* has to do more with the distribution of wealth and socially valued positions: 'Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity' (Rawls 1971, 302; 2nd Edition 1999, 72). We would not opt for a fully equal society from behind the veil of ignorance, Rawls argues, but rather grant inequalities if and only if they are to the advantage of the worst off. The moral idea behind this hypothetical choice is that the distribution of wealth and opportunities should not depend on morally arbitrary grounds, such as the social class one is born into, one's sex, one's level of intelligence, and so on.

Rawls' contractarian conception of justice remains very influential to this day. What is remarkable, however, is that he limited the application of these principles to the *domestic* realm. As mentioned earlier in section 1.1.2, Rawls is a proponent of the morality-of-states approach, which means that he advocates different principles for the governance of the domestic versus the international realm. He developed his *international* account in *The Law of Peoples* (1999) and it is striking how much this differs from his 'justice as fairness' at the domestic level. The question thus arises to what extent this discrepancy is justified. In our exploration of this issue, we will focus on two key figures in the contractarian tradition, namely Charles Beitz and Darrel Moellendorf.

¹³ These institutions regulate, for example, our freedom of speech, the market, property, family, and political liberty. They thus influence our lives to a large extent.

Charles Beitz

We already mentioned Beitz in section 1.1.2, where we discussed his attempts to refute political realism and the society-of-states approach. In contrast to these positions (and especially Rawls), Beitz argues that there *is* such a thing as international distributive justice. More specifically, he agrees with Rawls that justice only applies in contexts of social cooperation, yet claims that our current world meets this condition. Consequently, the principles of justice that apply to the domestic sphere should also apply internationally. As trade, communication, financial transfers and the property rights regime all have become increasingly globalized, the relevant difference between the domestic and the international context has dissolved:

Economic interdependence, then, involves a pattern of relationships which are largely nonvoluntary from the point of view of the worse-off participants, and which produce benefits for some while imposing burdens on others. These facts, by now part of the conventional wisdom of international relations, describe a world in which national boundaries can no longer be regarded as the outer limits of social cooperation. (Beitz 1975, 374)

As states no longer meet the condition of self-sufficiency, we should abandon the state-centred perspective and apply the relevant principles of distributive justice globally (Beitz 1975, 383). More specifically, Beitz argues for a *global* ‘original position’ in which the representatives would be unaware not only of their position *in* society, but even of *which* specific society they will inhabit. Beitz believes that enlarging the scope of the original position in this way is unlikely to change the content of the principles that would be chosen (1975, 376). He uses Rawls’ contractarian argumentation, yet reaches a cosmopolitan conclusion. With regard to distributive justice, this would imply a *global* difference principle, justifying only those social and economic inequalities that are of the greatest benefit to the least advantaged members *of the world*. The way things currently are, is clearly at odds with this criterion.

Darrel Moellendorf

Darrel Moellendorf explores this line of reasoning further in his book *Cosmopolitan Justice* (2002). He starts by distinguishing between general moral duties and duties of justice, and proceeds to develop an institutional account of cosmopolitanism. Much like Rawls, he focuses on the duties we have regarding the institutions that structure our social and political lives to a large extent. He considers these duties of justice to be a subset of our more general moral duties. They are generated by associational relations and can be

discharged indirectly, namely through obeying or advocating just institutions and principles to govern these associational relations (Moellendorf 2002, 31).

This conceptualization of duties of justice implies that they are not owed to everyone, as they require a relevant association; they are *membership dependent*. Moellendorf (2010, 3-4) demarcates those associations that generate duties of justice using 'the principle of associational justice':

The idea is that duties of social justice exist between persons who have a moral duty of equal respect to one another if those persons are co-members in an association that is (1) relatively strong, (2) largely (individually) non-voluntary, (3) constitutive of a significant part of the background rules for the various relationships of their public lives, and (4) governed by norms that can be subject to (collective) human control.

How strong an association is, depends on how enduring it is, how comprehensively governed by institutional norms, and how regularly it affects the highest order moral interests of its members. Its (non-)voluntariness has to do with the availability of a reasonable alternative to participating in the association. Moellendorf admits that determining whether these conditions are met is not always straightforward; it requires casuistry (Moellendorf 2010, 4).

A first, rather obvious, association that might generate duties of justice, is the state. Its rules clearly structure our public lives and affect persons' highest order moral interests. Moreover, given the costs of emigration, for most people no reasonable alternative is available. Therefore, Moellendorf (2010, 9) concludes that states are indeed associations that generate duties of justice among compatriots. In this way, his account of cosmopolitanism can accommodate special duties to compatriots. As a *moderate* cosmopolitan, he does not deny the intrinsic value special relationships like this can have, nor the corresponding special obligations. Moreover, his principle of associational justice can explain the *raison d'être* of special obligations as duties of justice. Therefore, we may reasonably expect that his account of cosmopolitanism can more easily be accepted by nationalists and society-of-states proponents.

The question remains however as to whether Moellendorf could convince nationalists and society-of-states proponents of the existence of *global* duties of justice. Given his own rationale, he would need to demonstrate the existence of a *global association*, strong enough to meet the conditions of his principle of associational justice. In line with Beitz's reasoning, Moellendorf argues that the global economic order falls within this framework. He first considers the condition of *strength* (Moellendorf 2010, 12-13). He traces the origin of our globalized economy back to the early colonial area, to pinpoint

how enduring it is. Moreover, he focuses on the norms of governance that are provided by the World Trade Organization (WTO), the International Monetary Fund (IMF), and the World Bank, and the implicit recognition of exclusionary property regimes in all international commerce. He further argues that the globalization of trade, investment and finance is seriously affecting the highest order moral interests of persons. By way of illustration, he looks at the position of some of the poorest and most vulnerable people worldwide, viz. children in sub-Saharan Africa. In 1990, they were 19 times more likely to die than children in the richest countries. By 2003, however, this number had already grown to 26 times (UNDP 2003, 39). This situation is the result of a complex combination of factors, so it would be misleading to attribute it solely to the process of economic globalization. However, Moellendorf's claim that international trade, foreign direct investment, and the globalization of finance profoundly affect people's local economies, cannot be easily dismissed (2010, 13).

The second condition that needs to be met in order for an association to generate duties of justice is *non-voluntariness*. Moellendorf admits that political leaders are formally free to decide whether or not to join the WTO, yet he interprets the fact that nearly every country is a member as implying that no feasible alternative exists. Moreover, he points out that many countries are not in fact democratic, which clearly undermines the possibility of a voluntary consent of their citizens.

The third condition has to do with the extent to which an association determines the *background rules* for the relationships people have in their public lives (Moellendorf 2010, 13-14). We already mentioned the impact of the rules of the WTO on the domestic policies of its members. Moellendorf explicitly mentions patent protection, established by the WTO Agreement on Trade Related aspects of Intellectual Property rights (TRIPS 1994), which critically undermines the ability of states to provide their citizens with life-saving medicines.¹⁴ This is a clear illustration of the way background rules seriously affect people's lives.¹⁵

Before an association can give rise to duties of justice, its norms also need to be subject to human control. According to Moellendorf (2010, 14) this is a foregone conclusion: 'Market competition can be limited, directed, or counterbalanced by deliberate public policy; WTO rules can be amended; and property regimes can be altered. So, there is no doubt that the global economic association satisfies this condition'.

¹⁴ For a proposal to tackle this problem, see Hollis & Pogge (2008).

¹⁵ As this regulation clearly affects the highest order moral interests of persons, *the actual difference* between this condition of associational justice (significant link with background rules that affect the relationships of people's public lives) and condition 1 (strength of the association) seems to be open to interpretation.

Moellendorf thus concludes that *the global economic association* meets the four conditions of the principle of associational justice, which implies that it *generates duties of justice*. However, as he himself notes, the emergent and partial nature of the global economic association might cast doubt on this account (Moellendorf 2010, 17). The scope of the duties of justice seems to depend on the threshold we use to determine who exactly counts as a member of the global economic association.¹⁶ We agree with Moellendorf that *for almost everyone* the conditions of associational justice are met: the global economic association affects most people's highest order moral interests; membership is non-voluntary; the association largely determines the background rules that regulate people's public lives; and the governing norms are subject to human control. To the extent that the economic association is global, it thus generates *duties of justice with a global scope*.

What makes Moellendorf's account of associational justice so appealing is that it provides the basis for a theoretical reconciliation of duties to compatriots and cosmopolitan duties to non-compatriots (Moellendorf 2010, 22). He does not deny that we have duties of justice to compatriots and even provides nationalists and society-of-states proponents with a theoretical framework that can ground these special duties. However, the possibility of conflict between both kinds of duties remains. To resolve such conflicts, we need to weigh both duties against each other, taking into account the relevant circumstances. Giving general priority to either of the two is merely question-begging:

When claims of justice made by compatriots and noncompatriots conflict, resolution is often possible by appealing to more fundamental or background considerations of justice. This assertion does not, however, entail that the claims of compatriots invariably trump the claims of noncompatriots or vice versa. It is an assertion about the manner of resolution, not its outcome. (Moellendorf 2002, 41)

More specifically, Moellendorf (2002, 43) urges us to look at 'the basic consideration of justice at stake in particular disputes'. What this means, seems to depend on the specific interpretation of global justice that is being advocated, and how demanding it is conceived. In other words, how does Moellendorf conceptualize a just world and should we characterize his theory as an example of weak or strong cosmopolitanism?

¹⁶ Do we, for example, owe duties of justice to the indigenous people of the Amazon rainforest, as they arguably are no active participants in the global economic order? Moellendorf argues that climate change – a process linked to economic globalization – could also generate global duties of justice: '*Global warming seems to pose a threat to most everyone. [...] the distribution of pollutants in the atmosphere has also brought people into an unavoidable association affecting their highest order moral interests*' (Moellendorf 2002, 37).

Much like Beitz, Moellendorf argues that duties of global egalitarian distributive justice do exist (2002, 68). Moreover, he wants to extend Rawls' conception of domestic justice to the global realm and he advocates a global difference principle. This means that inequalities are only justified insofar as they benefit those people who are worst off on the global scale. Furthermore, Moellendorf argues for global equality of opportunity. In *A Theory of Justice* Rawls defines what 'fair equality of opportunity' means *in the domestic realm*:

[...] those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. (Rawls 1971, 73)

Moellendorf wants to generalize this principle and apply it to the *global* realm as well. He argues that our initial place in the social system is not only determined by the income class into which we are born, our sex, race, and ethnicity, but should also entail *our country of birth*. As Branko Milanovic has convincingly demonstrated in his studies for the World Bank, our country of birth has a massive influence on our opportunity for income. As this feature is as morally arbitrary as those corrected for in the domestic context, it seems puzzling why a principle of fair equality of opportunity should be restricted to the domestic sphere.

A possible explanation could be that *global* equality of opportunity is simply an overly demanding conception of global justice. This becomes clear when we look at Moellendorf's understanding of the principle (2002, 49): 'If equality of opportunity were realized, a child growing up in rural Mozambique would be statistically as likely as the child of a senior executive at a Swiss bank to reach the position of the latter's parent'. He concedes that this would require substantial wealth transfers from the developed to the developing countries, to support their education, health, food and security programs. A possible rebuttal of this demandingness objection focuses on *equivalent*, rather than *identical*, opportunity sets (Miller 2007, 63).¹⁷ We will return to this issue when we discuss the needs-based account of cosmopolitanism advocated by Gillian Brock.

¹⁷ Miller denies that this adaptation can save the global application of the principle of equality of opportunity. He argues that we still face a metric problem, namely that there is no global common set of cultural understandings to enable cross-national opportunity comparisons. We have no way of establishing what

Here we will conclude that Moellendorf advocates a rather nuanced, somewhat hybrid, position. On the one hand, he accepts the legitimacy of special obligations towards compatriots, which makes him a *moderate* cosmopolitan. On the other hand, he defends a global difference principle and global equality of opportunity, which characterizes him as a *strong* cosmopolitan.

2.2.3.3 A needs-based account of cosmopolitanism

Gillian Brock (2009, 47) agrees with Moellendorf (and Beitz) that the Rawlsian framework can also be useful in the global context, as it succeeds quite well in modelling impartiality. The conclusion she reaches, however, is different. More specifically, she questions whether the representatives in the global original position would indeed choose a global difference principle. She designs an alternative Rawlsian-style normative thought experiment and argues that it would be reasonable to choose a more minimally egalitarian principle, characterized by a needs-based minimum floor (Brock 2005, 4).

In her thought experiment, delegates are asked to reflect on which basic structure for governing the world's inhabitants would reasonably be accepted as fair. She agrees with Moellendorf that the veil of ignorance would yield special attention to the interests of the worst off, because the delegates might themselves turn out to be worst off. However, she argues that this would urge the representatives to ensure a certain *threshold*, instead of a global difference principle. More specifically, the representatives would want to avoid policies that would have unbearable effects on people (2005, 6):

So my claim is that the minimum package it would be reasonable to agree to in the ideal choosing situation I have identified is that we should all be adequately positioned to enjoy the prospects for a decent life, as fleshed out by what is necessary to be enabled to meet our basic needs and those of our dependents (but with provisions firmly in place for the permanently or temporarily disabled to be adequately cared for) and certain guarantees about basic freedom. We would use this as a baseline and endorse social and political arrangements that can ensure and underwrite these important goods. (Brock 2005, 8)

Brock then strengthens her account by providing empirical data indicating that people would *actually* choose some kind of minimum floor principle instead of the – more demanding – global difference principle. In this context she (Brock 2005, 10) refers to the

equality of opportunity *means* in a culturally plural world (2007, 64–68). However, he does concede that '*we might be able to identify the most egregious forms of inequality*' (Ibid., 67). Given the current state of the world, this could definitely start us in the right direction.

work of Norman and Joe Oppenheimer, who have designed several experiments in a way that is said to show which principles of distributive justice people would choose under conditions of impartiality. One could say that Frohlich and Oppenheimer, to a certain extent, have tried to put Rawls' hypothetical original position into practice. In contrast to what Rawls might have expected, the *difference principle* turned out to be the least popular; it was chosen in only 1 % of cases. Frohlich and Oppenheimer experimented in different countries, and the *floor constraint principle* was by far the most popular. Almost 80 % of people wanted to maximize the floor income in society. The rationale underlying this choice was that this principle would act as a safety net for all individuals. Important here is that they chose this floor constraint principle out of a concern for people being able to meet their *basic needs*. Once this threshold was met, people did not want any further redistribution. They wanted to make full use of the existing incentives and in this way maximize production and thus average income (Frohlich & Oppenheimer 1992, 59).

When thinking about justice, people thus seem to balance needs, entitlements and incentives (Brock 2005, 13). This sounds very reasonable when we consider the debate about the appropriate height of unemployment benefits. Based on the data of the abovementioned experiments, Brock argues that a fair balance can be found between these three central ideas (needs, entitlements and incentives) in designing the basic structure of society. However, it is not the balance Rawls (domestically) and Moellendorf (globally) had in mind:

We could arrive at a reasoned view of the weight to give a commitment to meeting basic needs which does not thwart entitlement or dampen incentives. It is not the case that we care only about the worst off, nor is it the case that considerations of entitlements and incentives drown out our appropriate concern with needs. As the empirical evidence shows, concern for the needy is strong and robust, all things considered. But importantly, it is strikingly not the case that under conditions of impartiality we want to arrange things so that we concern ourselves only with maximizing the position of the worst off. This tells rather dramatically against the Difference Principle. (Brock 2005, 13-14)

The fact that people would actually choose a minimum floor principle under conditions that model impartiality, goes some way towards proving it to be a fair principle. Based on Frohlich and Oppenheimer (1992, 118), Brock also claims that the preference for this principle remains stable over time; people's confidence grows when

they have to live with the result of their choices (Brock 2005, 14).¹⁸ These features both seem to be in the interest of the worst off, and therefore, Brock (Ibid., 15) argues, the needs-based minimum floor principle she suggests, need not differ fundamentally from the global difference principle.

Whether and to what extent both principles would differ, seems to depend on the current state of affairs. As things stand, making sure that everyone can meet his basic needs is very likely in the interests of the worst off. Once this threshold has been met, however, both principles would require different courses of action. Whereas Brock's principle would in principle allow for large inequalities, Moellendorf would argue that these are only justified if they are beneficial for the worst off. His global difference principle would thus require more redistribution. Hence we would submit that Brock's needs-based minimum floor principle characterizes her theory as a *weak* account of cosmopolitanism, which increases its acceptability for her opponents.

Brock (2005, 16) also challenges Moellendorf's call for global equality of opportunity, not for being too demanding but because it is too culturally specific or culturally insensitive (Brock 2009, 59). As different cultures value different ends or goods, it seems impossible to compare the desirability of positions between cultures. As noted earlier, Miller (2007, 64-68) calls this the metric problem. Caney (2001b, 120) has tried to refute this objection by developing a more culturally neutral account: 'Global Equality of Opportunity requires that persons (of equal ability and motivation) have equal opportunities to attain an equal number of positions of a commensurate standard of living'. In his attempt to describe 'positions of equal worth' he builds on Nussbaum's capabilities approach, which we will discuss in the next section. Brock (2005, 19) however argues that this account is unable to block disadvantage and discrimination on morally arbitrary grounds. By focusing on the enjoyment of an equal standard of living, differences in power or genuine opportunities might pass unnoticed. We believe, however, that these criticisms call for a refinement of the concept, rather than refuting the possibility of a principle of global equality of opportunity in general.

Be that as it may, designing a positive version of a principle of global equality of opportunity is likely to remain controversial. Brock's plea to return to the negative version of the principle therefore has some appeal to it. Enabling people to meet their basic needs seems a very promising strategy to enhance their opportunities. Without

¹⁸ Brock (2005, 20) links these features to Rawls' concept of a 'realistic utopia' (1999, 11-12). The focus on impartiality ensures the utopian component, whereas the stability over time provides the realistic component.

secure access to clean water, food, sanitation, education, and health care, talk of equal opportunities becomes just another empty word (Brock 2005, 19).

Brock (2009, 62) also points out that our focus on *equalizing* opportunities might be misguided, as the underlying thought seems to be the concern to provide everyone with a *decent* set of opportunities: ‘The decent, not the equal, set of opportunities is surely the primary goal, because consider how we could easily equalize downwards, so that everyone has the same opportunities, yet these are hopelessly inadequate’. Indeed, it is important that people can meet their basic needs, so they can function as human agents.¹⁹ What is required to attain this goal, can be summarized in five categories: (1) physical and psychological health; (2) security; (3) an understanding of the options one is choosing between; (4) autonomy; and (5) decent social relations. A further advantage of this account, according to Brock (2009, 65-68), is that it is sufficiently specific to assess the state of affairs and track progress.

To sum up, Brock’s needs-based minimum floor principle seems quite promising. As a *weak* cosmopolitan, she is not overly focused on equality, so possible opponents will be less easily scared off than with a global difference principle. Moreover, her focus on *needs* as the basis for a *decent* set of opportunities seems uncontroversial. However, before we can jump to any conclusions, we still have three alternative accounts of cosmopolitanism to consider.

2.2.3.4 The capability approach

The next account of cosmopolitanism we will discuss, bears resemblance to Brock’s needs-based account, as they are both focused on the conditions needed for human flourishing. In *Frontiers of Justice. Disability, Nationality, Species Membership* (2006, 226-7) Martha Nussbaum examines ‘what all human beings require to live a richly human life – a set of basic entitlements for all people’. What do we need to live a life with dignity? Her focus on human flourishing reveals her Aristotelian inspiration.²⁰ Nussbaum’s answer consists of a list of ten capabilities, requirements for living a good life, namely: life; bodily health; bodily integrity; senses, imagination, and thought; emotions; practical reasons; affiliation; other species; play; and control over one’s environment (Nussbaum 2006, 76-78). In this way, the capability approach focuses on what people are actually able to do

¹⁹ Brock links needs to *human agency*, but other underpinnings are also possible. David Braybrooke (1987), for example, explains the importance of needs in relation to *social functioning*.

²⁰ According to Nussbaum, Aristotle conceived of the task of political planning as ‘to make available to each and every citizen the material, institutional and educational circumstances in which good human functioning may be chosen; to move each and every one of them across a threshold of capability into circumstances in which they may choose to live and function well’ (1998, 135).

and to be, rather than on utility/happiness or the amount of resources they have (Sen 1992, 48). Important here is the difference between functionings and capabilities. Functionings are the ‘beings and doings’ a person can undertake, like ‘being’ well-nourished or educated, and travelling or voting in an election (doings). Capabilities, on the other hand, entail the freedom to achieve well-being or the real opportunities one has to achieve functionings (Robeyns 2011):

Thus, while travelling is a functioning, the real opportunity to travel is the corresponding capability. The distinction between functionings and capabilities is between the realized and the effectively possible, in other words, between achievements, on the one hand, and freedoms or valuable opportunities from which one can choose, on the other.

Consider in this context the difference between fasting and starving (Sen 1992, 52). Whereas the functioning is the same in both situations, there is a fundamental difference with regard to the capability to be adequately nourished. In a just world, then, everyone would have the opportunity to achieve all the relevant functionings. Yet how should this goal be operationalized? How should the relevant list of capabilities be determined, for example? And is there not a risk of paternalism in proclaiming which capabilities should be valued universally (Stewart 2001, 1192; Clark 2002)? Sen (2004, 77) acknowledges this danger and argues for a more participatory approach:

The problem is not with listing important capabilities, but with insisting on one predetermined canonical list of capabilities, chosen by theorists without any general social discussion or public reasoning. To have such a fixed list, emanating entirely from pure theory, is to deny the possibility of fruitful public participation on what should be included and why [...] Public discussion and reasoning can lead to a better understanding of the role, reach and significance of particular capabilities [...]

Even if we agree with Nussbaum that her list is sufficiently abstract or cultural-neutral,²¹ the question still remains how different capabilities should be weighted. In an ideal theory, Nussbaum is right to argue that they are all equally important and incommensurable conditions for living a life with dignity. In this way, the capability

²¹ We agree that the focus on capabilities rather than on specific functionings lowers the risk of paternalism by accommodating local differences. Moreover, Nussbaum herself stresses that her list is open-ended and always open for revision (Nussbaum 2000, 77).

approach has broadened the ‘informational basis’ for assessment (from a narrow focus on income to multiple social indicators). Designing and assessing policy, however, is dependent on empirical data which are not always easily accessible. Paul Anand (2005) and Martin van Hees (2006) have attempted to tackle this challenge by setting up the *Capabilities Measurement Project*.²² Through this research, they want to develop a multidimensional tool for measuring capabilities. The importance of capabilities for living a life with dignity is also reflected in the work of the United Nations Development Programme (UNDP) and its annual publication of the Human Development Report. In this report, countries are evaluated and ranked using a Human Development Index (HDI) consisting of both economic and social indicators.²³ This broader informational basis includes life expectancy, education, standard of living and political participation.

Knowing *what* capability theorists advocate, we now want to focus on the *extent to which* they say this should be attained. The concept of *basic capability* is very insightful in this context, as it refers to ‘the ability to satisfy certain elementary and crucially important functionings up to certain levels’ (Sen 1992, 45 n. 19). Basic capabilities thus refer to having real opportunities for survival and being free from poverty. As such, they constitute a threshold that everyone should be able to meet. Rather than aiming for equality as such, the focus of the capability approach seems to be on providing everyone with a *sufficient* level to enable a life with dignity (sufficientarianism).²⁴

Brock rightly points out that this *weak* cosmopolitan account comes close to her needs-based minimum floor principle, as a pre-condition for living a decent life. However, fulfilling this task is no walk in the park and it remains unclear to whom this duty would be allocated if states (the primary bearers of this responsibility, according to Nussbaum) would fail.

2.2.3.5 The Kantian account of cosmopolitanism

Before we can discuss the Kantian account into detail, we should briefly look at the moral foundations of Kant’s cosmopolitanism (Brown 2010, 46–49). Pivotal here is Kant’s categorical imperative, which demands to ‘act only according to the maxim whereby you can at the same time will that it should become a universal law’ (Kant 1993 [1785], 30). From this Kant derives two important principles of cosmopolitan universality, namely: (1) that we should act in such a way that we treat humanity, whether in our own person

²² http://www.open.ac.uk/ikd/projects_capabilitiesmeasurement.shtml.

²³ <http://hdr.undp.org/en/content/human-development-index-hdi>.

²⁴ Robeyns (2011) rightly points out that not all capability theories necessarily entail a sufficiency rule like Nussbaum. If they do not, however, we should characterize them as *strong* cosmopolitan accounts, which would reduce their chance of ever being accepted by their opponents.

or in the person of another, always at the same time as an end, and never merely as a means; and (2) that legislative maxims can only be valid if they can at the same time have for their object themselves as universal laws of nature (Brown 2010, 47). From this Brown concludes that it is because of our universal capacity to be moral lawgivers, that we should treat everyone with a sense of *universal human dignity*. This implies that everyone has the right to as much freedom as is compatible with that of others, simply by virtue of the fact that they are human.

The emphasis on universality in Kant's moral theory clearly indicates that he is a moral cosmopolitan. He believes that – as rational beings – we are all members of a single moral community and that our obligations are not restricted by nationality, language, religion, or customs (Kleingeld 2003, 301). Pauline Kleingeld distinguishes two political aspects in Kant's cosmopolitanism, namely the concept of a 'league of states' and that of a 'cosmopolitan law' (Kleingeld 2003, 301-302).²⁵ In *Toward Perpetual Peace* (1795) Kant argued that states should join this league of nations and thereby promote peace, an idea that is reflected in the United Nations. His cosmopolitan law (*Weltbürgerrecht*) is an addition to constitutional and international law, and grants individuals certain rights as *citizens of the earth*, regardless of their nationality. The right to hospitality, for example, falls under this cosmopolitan law.

Kant's moral theory is thus cosmopolitan in nature. What could a Kantian account contribute to the debate between cosmopolitans? Onora O'Neill has tried to answer this question in *A Kantian Approach to Transnational Justice* (2010). She begins by pointing out the flaws in alternative competing theories. She blames communitarians (and others who grant compatriots legitimate priority and deny that international distributive justice is an issue) for their 'self-serving nostalgia'. Much like Beitz, O'Neill (2010, 64) believes the necessary pre-condition for this view can no longer be met: 'It is not a world of closed communities with mutually impenetrable ways of thought, self-sufficient economies and ideally sovereign states'. Against consequentialist accounts such as utilitarianism, she argues that these cannot fully grasp the importance that non-consequentialists attach to some aspects of justice, for example individual rights; 'in taking the production of benefit as the criterion for right action it permits some lives to be used and used up in order to produce benefit (happiness or well-being) in other lives' (O'Neill 2010, 65). Rights-based accounts can solve this problem, but only to face a different problem, and this is where a Kantian account brings added value, according to O'Neill.

²⁵ Kleingeld has examined whether Kantianism can accommodate patriotism and argues that civic patriotism can be defended as a duty.

When we consider rights, we normally assume that there are corresponding obligations that can be *claimed*. If those obligations cannot be allocated to a specific duty-bearer, the rights under consideration will only be ‘manifesto rights’ (Feinberg 1980). Traditionally, however, a distinction is made between perfect and imperfect duties, with the former applying to everyone in a strict way, whereas the latter allow for a great deal of latitude on the part of agents as to time, place, manner, and extent of fulfilling the duties (Lichtenberg 2014, 49). Negative duties, like the duty not to harm, are perfect. Positive duties, like duties of beneficence, are imperfect. This poses a problem, since: ‘for [positive duties] to be real and meaningful, we must be able to say *who* has the duty to fulfil them or not to violate them and exactly what and how such agents must do’ (Lichtenberg 2014, 50).

Under this conception, a theory can either limit itself to negative duties (e.g. libertarianism) and thus neglect certain needs, or argue for welfare rights, and thus leave certain obligations unallocated. O’Neill (2010, 73) has tried to combine an account of the allocation of obligations with an acknowledgement of the claims of need and poverty, by sketching an account of obligations among finite, needy beings. A first way in which her Kantian account might do better than theories of rights is by offering an account of *virtue* as well as justice. The underlying rationale is that rational beings whose desires standardly outrun their own resources will discover that they cannot universally act on principles of neglecting needs. Neglecting positive duties completely would thus not comply with Kant’s categorical imperative. This account does not make imperfect duties into perfect ones, but endows them with some extra normative force:

The advantage of an account of imperfect obligations is that it neither insists that what have traditionally been thought of as imperfect duties have corresponding rights nor treats them as in no way obligatory. In short, the approach leaves room, as rights-based approaches do not, for a non-trivializing account of the social and institutional virtues. (O’Neill 2010, 75)

O’Neill thus argues for a universal imperfect duty to meet needs, but without positing a positive right on the side of the needy. According to her, rights to subsistence can be nothing more than ‘empty manifesto rights’, and recognizing this implies that we should rather use the discourse of obligations (O’Neill 1998, 12). We agree with O’Neill that a Kantian account and an emphasis on obligations can add normative force to meeting people’s needs. We do not, however, think that this solves the problem of allocation in a compelling way.

2.2.3.6 Rights-based accounts

The final account of cosmopolitanism we will discuss takes *rights* as its focal point. Important advocates of this account are Henry Shue, Charles Jones, Simon Caney, and Thomas Pogge. Before we will discuss their views into more detail, we will examine what gives rights their special appeal.

David Copp (1998) has tried to answer this question and argues (in direct contrast to O'Neill) for a *right* to be enabled to meet one's basic needs.²⁶ In line with Brock, he takes this to be an important means to living a decent life. He considers our ability to satisfy basic needs to be 'a nonarbitrary and theoretically defensible criterion of the minimal adequacy of a standard of living' (1998, 122). So far, the views of Copp and Brock are quite similar. Copp however goes on to emphasize that having our basic needs met is a *right*, which endows it with a special status (1998, 127):

The special status of rights has been thought to have three aspects. First, rights have priority over the ordinary goals and duties of the state and over the goal of promoting the general welfare. Rights can be overridden only in the interest of a goal or duty of special urgency. Second, rights can be claimed as their due by the people who possess them. Right holders are wronged if their rights are abridged. Third, a person who claims something to which she has a right does not thereby demean herself or undermine her grounds for self-respect or self-esteem. On the contrary, a person with proper self-respect and self-esteem would claim the things to which she had a right, unless she had a good reason not to do so.

The fact that rights have this special status is what convinced Copp that being able to meet one's basic needs is best characterized as a right (Copp 1998, 127). Stan Van Hooft (2009, 57-58) expresses a similar idea when he differentiates between the moral quality of claiming assistance as a matter of *right* and the moral quality of *begging* for it. He makes the same distinction on the part of the donors. Donors are said to act generously or charitably when giving in the absence of a corresponding right to receive assistance. However, when the recipients are *exercising their right*, fulfilling it is nothing more than just. In this context, Van Hooft refers to Onora O'Neill and the formal complementarity between rights and duties; 'Once we start talking about *rights*, we assume a framework in which performance of obligations can be *claimed*. Rights have to be allocated to specified bearers of obligations: otherwise, claimants of rights cannot know to which obligation bearer their claims should be addressed' (1998, 96). We argue that characterizing the

²⁶ Copp conceptualizes this as a right against the state, more specifically against a state in favorable circumstances.

fulfilment of our basic needs as a right can bring added value, but only if this task can be adequately allocated.

Within this rights-based approach, different positions are advocated. A first divisive issue is the question whether or not humans are entitled to social and economic rights, in addition to basic civil and political rights. Civil and political rights include the right to freedom of expression, conscience, and association, the right to security of the person, the right to due process and the rule of law, and the right to political participation. Socio-economic and cultural rights include the right to a fair share of basic resources and the right to basic education (Jones 2013, 60). Traditionally, socio-economic rights are considered more controversial, among other things because of their assumed high cost (Cranston 1962). However, the *International Covenant on Economic, Social and Cultural Rights* (1966a, Article 11) explicitly endorses a subsistence right as ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’ and ‘the fundamental right of everyone to be free from hunger’. The question however remains who should ensure that this right is met?

Generally, this is considered to be the task of the state, but what if it fails to do so? According to Henry Shue (1996, 51-60) the responsibility then becomes more generalized. He argues that the complete fulfilment of every right (including the right to subsistence) gives rise to different kinds of duties, namely duties to *avoid* depriving; duties to *protect* from deprivation; and duties to *aid* the deprived. These duties are interrelated; if everyone could be relied on to fulfil the first duty, then the second one would be superfluous. The third duty (to aid the deprived) can be the result of a failure to fulfil both other duties, but it can also be attached to a special role or relationship, or it may result from natural disasters. Irrespective of the specific origin of the duty to aid the deprived, Shue firmly argues for a *basic right* to subsistence to which everyone is entitled. As a moral right, this provides ‘(1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats’ (1996, 13).

Charles Jones (2011, 117) defends a similar position. He argues that human rights are claims linked to the dignity and equal moral status of individual human beings and conceives of them as the normative link between interests and duties (2013, 58). He agrees with Shue that human rights protect important individual interests against standard threats, and he links the duties generated by these rights to *institutions*, rather than individuals. As surviving is one of the most basic interests people have, Jones conceptualizes the right to subsistence as a human right. He acknowledges the danger of inflating human rights by allowing too many demands to count as *rights*, but argues that this risk is not at issue in the case of subsistence:

While worries about inflation should lead to denial for certain candidate-rights, it is difficult to see how an interest as fundamental as access to clean water, clean air, and adequate nutrition could be less important than any other interest one might identify. Consequently, it seems reasonable to conclude that even the most trimmed-down set of human rights must contain a right to subsistence. (Jones 2013, 67)

Apart from subsistence, his minimal list also includes the rights to life, physical security, and basic freedoms (Jones 2013, 68).

Fulfilling a universal subsistence right might be demanding, yet Shue and Jones can still be characterized as *weak cosmopolitans*, due to the sufficientarian nature of their account. Nonetheless, their position remains controversial, even if we disregard the implied demandingness. This has to do with the way they conceptualize the duties corresponding with the right to subsistence and challenge the distinction between positive and negative rights. Traditionally, negative rights are conceptualized as rights of *noninterference* and positive rights as rights of *assistance*. In the same way, a distinction is made between negative duties of noninterference and positive duties of assistance (Cruft 2005, 29-30). Shue is especially critical about this distinction, but we agree with Scheffler (2001, 39) that it remains one of the important hallmarks of our common sense conception of individual responsibility. People believe it does matter whether or not they had anything to do with the situation of deprivation they are expected to remedy; 'individuals have a special responsibility for what they themselves do, as opposed to what they merely fail to prevent' (Scheffler 1995, 223). Disregarding this will minimize the chance of being accepted as a viable theory.

Thomas Pogge fully acknowledges this fact and builds his cosmopolitan theory on the primacy of negative rights and duties. He takes up an ecumenical strategy in an attempt to convince proponents of all important schools of thought, including libertarianism (Pogge 2005a, 95). By avoiding claims about positive duties, he seems to want to make clear that his argument does not depend on positive duties (Ibid., 93). His minimal conception only states that *respecting* negative human rights is a necessary condition for justice (Pogge 2005b, 76), which corresponds to Shue's duty to *avoid* depriving. Any institutional order we impose upon others must meet this condition as far as reasonable possible. If an institutional order violates human rights, we have the obligation to reform it and compensate those who have been harmed.

In his book *World Poverty and Human Rights* Pogge evaluates the current state of affairs by applying this minimal criterion. He argues that we, the global rich, are harming the global poor through the global economic order we uphold. Rather than failing to fulfil a positive duty of charity or assistance, we are actively violating our negative duty not to

harm other people. Our economic order foreseeably and avoidably causes human rights deficits and everyone who participates in its creation or imposition consequently harms those affected negatively (Pogge 2008, 25-26). We want to emphasize the strength of this minimalist normative position in comparison with more demanding theories, such as Shue's.

Setting aside any open-ended positive duty to help the badly off, my appeal to a negative duty generates then compensatory obligations that are tightly limited in range (to persons subject to an institutional order one cooperates in imposing), in subject matter (to the avoidance of human rights deficits), and in demandingness (to compensation for one's share of that part of the human rights deficit that foreseeably is reasonably avoidable through a feasible alternative institutional design). (Pogge 2008, 26)

Like Shue and Jones, Pogge advocates a global sufficientarian theory, and thus a weak cosmopolitan account. However, since he has slimmed down his theoretical framework by avoiding more controversial positive duties, his account cannot easily be dismissed. By limiting his framework to negative rights and perfect duties, he is not vulnerable to the allocation problem O'Neill addressed.

Caney has also elaborated a minimal conception of human rights, and examined what this would entail when applied to climate change. He defines human rights as 'minimum moral thresholds to which all individuals are entitled, simply by virtue of their humanity, and which override all other moral values' (2010, 165). Within this context, everyone is entitled to three key rights: the right to life, the right to health, and the right to subsistence. Caney (2010, 166) explicitly mentions that he uses the least contentious and most modest formulation of each of these rights, to strengthen his argument in the same way Pogge does.²⁷

Caney (2010, 166-167) first discusses the right to life, the human right not to be 'arbitrarily deprived of his life' (*International Covenant on Civil and Political Rights* 1966b, Article 6.1). He employs a minimal conception of this right as a merely *negative* right, not making the more contentious claim that persons have a *positive* right to have their life protected against all kinds of threats. Especially in this minimal formulation, the right to life should be interpreted as 'the supreme right from which no derogation is permitted

²⁷ Caney convincingly argues that climate change jeopardizes these human rights, even under this minimal, negative account.

even in time of public emergency which threatens the life of the nation' (Human Rights Committee 1982, paragraph 1).

Second, Caney (2010, 167-168) endorses the right to health, again negatively interpreted. Whereas the *International Covenant on Economic, Social and Cultural Rights* (UN 1966a, article 12.1) recognizes 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health', which implies extensive positive measures, Caney proposes a less ambitious conception of this right. He merely asserts that everyone has the right 'that other people do not act so as to create serious threats to their health'. In this way, he wants to avoid the objections that can be raised against more maximalist conceptions of the right to health.

The third right included in Caney's (2010, 168-169) minimal conception proclaims that 'all persons have a human right that other people do not act so as to deprive them of the means of subsistence'. Under the traditional account mentioned above ('the right of everyone to an adequate standard of living [...]'), this right is conceived as demanding positive actions, and thus more controversial. That conception insists that everyone has a positive right to aid to avoid hunger, irrespective of how that hunger came about. Characterizing this as a requirement of justice, instead of charity, would require a theoretical framework that many would refuse to adopt.

The minimal conception advocated by Pogge and Caney seems able to gain wide support. As long as one does not actively violate the human rights of others, one enjoys quite some leeway in one's actions. Promoting equality beyond this threshold is not obligatory (weak cosmopolitanism) and giving priority to compatriots is not wrong by definition (moderate cosmopolitanism). By avoiding positive right-claims, this conception becomes more acceptable for other cosmopolitans, nationalists and society-of-states proponents alike.

2.3 Our position

In this chapter we have discussed many different accounts of global justice. We looked at political realism and the society-of-states approach (and its descendants) and argued that these are flawed. We then shifted our focus on the vast variety of cosmopolitan accounts and assessed their merits. As our main concern is with the feasibility of global justice, we are drawn to the more moderate, minimalist conceptions. We should be careful, however, not to neglect the utopian side of Rawls' 'realistic utopia'. Moreover, the fact that a theory

can enjoy widespread support is – although not entirely irrelevant – not a strong argument.

In this context, Laura Valentini develops an argument based on the notions of equal respect and reasonable disagreement. She starts by claiming that duties of justice, unlike duties of friendship or duties of charity, generate ‘rightfully enforceable entitlements’ (Valentini 2013, 94). This means that these entitlements may be enforced without wrongdoing, even if people are not sufficiently motivated to comply. As this is a defining feature of duties of justice, we should not decide lightly which duties are to be considered duties of justice. More specifically, Valentini examines whether equal respect and justice demand global equality. As there is reasonable disagreement about this claim, even amongst people who are genuinely committed to equal respect, global equality should not be enforced:

In other words, the demands of justice must be determined through “public reason,” corresponding to the area of overlap between different reasonable interpretations of equal respect. When it comes to establishing enforceable entitlements, we can therefore only assume the moral imperative to protect a set of fundamental rights. Beyond this threshold, equal respect itself prevents us from unilaterally establishing the conditions under which our social arrangements count as just or unjust. (Valentini 2013, 100)

Important here is the way Valentini understands public reason. She distinguishes between public reason positively understood, or what is *de facto* endorsed by the world at large, and public reason normatively understood, or what anyone committed to equal respect ought to endorse (Valentini 2013, 102). She is thus not arguing against global equality because there is no factual agreement on the desirability of this goal, but rather because equal respect implies not to impose your conception of the good on others when there is reasonable disagreement.

Valentini (2013, 100) concludes that justice does not demand global equality, but global sufficiency, in the form of respect for fundamental rights.²⁸ This comes very close to the minimal rights-based position defended by Pogge and Caney, characterized by their prioritizing of negative human rights. We agree with Valentini that more demanding conceptions of global justice are difficult to justify, given the reasonable disagreement that exists. We also agree with Pogge and Caney that this position can be ‘adopted from within a wide variety of different conceptions of the good and ethical worldviews’ (Caney

²⁸ Next to this outcome component, Valentini also argues for a procedural component, establishing a set of fair procedures to determine what justice might demand beyond these fundamental rights (2013, 103).

2010, 169). Because this position is a *moderate* (allowing special obligations) and *weak* (not arguing for global equality) form of cosmopolitanism, it will not face as much opposition as extreme and strong accounts.

We believe it is important to conceptualize this account as rights-based rather than needs-based, because of the special status that attaches to rights.²⁹ The formal complementarity between rights and duties adds an important dimension. However, we fully acknowledge O'Neill's concern with the allocation of imperfect obligations, which is why we limit our account to negative human rights. As these give rise to perfect duties (applying to everyone), the allocation problem can be avoided.³⁰ The fact that this normatively minimalist position can enjoy ecumenical support, is also an important point in its favour.

In this chapter we have outlined our own position regarding global justice. In the next chapter we will apply this minimalist conception to two specific 'results' of the process of globalization, namely climate change and the current global economic order. In this way, we will examine whether or not we are harming people through our role in these developments. After addressing the question as to what global justice might mean, we will now examine whether (and how) globalization has changed our responsibilities.

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²⁹ We agree with Brock (2009, 72) that needs are more basic than rights and should inform a plausible list of human rights.

³⁰ We will discuss this problem further in the next chapter.

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Chapter 3 Globalization and responsibility for human rights¹

3.1 Introduction

In 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly.² Despite important progress made over the last 66 years, many of these human rights still remain unfulfilled.³ In 2010, 2.4 billion people were living under the \$2 poverty line, 1.2 billion of whom had to live with even less than \$1.25 per day (World Bank 2013a).⁴ In 2010-2012, about 870 million people (or 1 in 8) were undernourished and an estimated 11 percent had no access to adequate drinking-water (FAO 2013, 67, 80). The human right to basic education⁵ is still not met for 57 million children and child mortality (6.9 million in 2011) remains high (UN 2013, 4-5). Moreover, diarrhoea kills around 760,000 children under five each year, although this figure could be significantly reduced through the provision of safe drinking-water and adequate sanitation and hygiene (WHO 2013). While future people are likely to suffer most of its adverse effects, anthropogenic climate change already impacts human life and worsens this situation, since it results in an increased frequency and intensity of heatwaves, floods, storms, fires and droughts (Confalonieri et al. 2007, 373). Indeed, anthropogenic climate change ‘violates the human rights to life, physical security, subsistence and

¹ This chapter is based on the following article: De Smet et al. (2015) “Globalization and responsibility for human rights.” *Journal of Human Rights*, 14(3), 419-438.

² In art. 25(1) the UDHR explicitly formulates a right to an adequate standard of living, including food, clothing, housing, medical care and necessary social services (UNGA 1948).

³ In Resolution 67/164, the UN General Assembly (UNGA) reaffirms that extreme poverty is a violation of human dignity and inhibits the observance of human rights (UNGA 2012).

⁴ On the characterization of poverty as a human rights violation, see Pogge (2008).

⁵ Art. 26(1) of the UDHR (UNGA 1948).

health' (Caney 2010; Bell 2011, 100). The fact that developing countries are likely to bear 75% of the costs of damages resulting from climate change (Hoornweg et al. 2010, 4) makes this situation even more problematic.

Our framework for this chapter is the 'responsibilities approach' to human rights, as developed by Kuper et al. (2005, ix-xxii). Proponents of this approach focus on the counterpart obligations⁶ that arise from human rights. They stress that if we fail to identify the agents that bear those obligations, we are at risk of emptying the human rights discourse of any meaningful content. To avoid this risk, we need a sound account for the allocation of responsibilities within our globalized world. The responsibilities approach to human rights is devoted to this major task:

[...] the responsibilities approach to human rights – where we demand, in every context, to know “who must do what for whom?” – provides the conceptual resources to move beyond conventional pieties and statist strictures. It provides a much-needed bridge that at once *strengthens* the discourses of rights and accountability and *links* them to one another: Responsibility becomes the middle term that allows us to delineate justifiable and feasible rights-claims and to identify and hold to account agents who can and should deliver on those rights. (Kuper et al. 2005, xxii)

Taking this approach as a starting point, we wish to examine which rights-claims are justified and who then bears the responsibility to fulfil these claims. Before we can answer this question, we need to make some observations on the nature of human rights.

Traditionally, a distinction is made between negative rights (understood as rights to *noninterference*) and positive rights (conceived of as rights to *assistance*).⁷ In the same way, a distinction is made between negative duties of noninterference and positive duties of assistance (Cruft 2005, 29-30).

Although the relevance of this distinction has been criticized (Shue 1980), we agree with Samuel Scheffler (2001, 39) that it remains one of the important hallmarks of our common sense conception of individual responsibility. Indeed, if we do not want to jeopardize the feasibility of our effort to ground human rights and allocate the corresponding obligations, we should not neglect the common sense view of responsibility. As explained by David Miller:

⁶ We use the terms 'obligation' and 'duty' interchangeably.

⁷ We already discussed this distinction briefly in the previous chapter.

From the agent's perspective there may be a difference between the stringency of the duty to refrain from causing harm and the duty to act beneficially, corresponding to the familiar (though much debated) distinction in moral philosophy between acts and omissions. Furthermore, whereas negative duties clearly fall on all agents, whether individual or collective, in the case of positive duties there is a substantive question about *whose* responsibility it is to provide the resources needed to secure basic rights, whenever there are many agents each of whom could potentially discharge the duty in question. (Miller 2005, 47)

In this chapter we therefore give priority to negative duties, precisely because this is a minimalist normative position which is widely acceptable. For example, the distinction between causing poverty and merely failing to reduce it, is morally significant in the common sense view of responsibility: 'individuals have a special responsibility for what they themselves do, as opposed to what they merely fail to prevent' (Scheffler 1995, 223). When we apply this distinction to the human rights approach, it becomes clear that our first and foremost duty is to avoid the active violation of negative human rights. Following Thomas Pogge (2008, 25), we will take this conception as our baseline for determining harm and injustice. We take the claim that if one violates people's human rights, one is harming those people, to be uncontroversial.

In the next section, we will examine how negative and positive rights fit in with the common sense distinction between general and special obligations. Our focus in section 2.3 will be on exactly what constitutes a reason to value relationships. In section 2.4, we will argue for the need to consider harm when developing an account of responsibility for human rights in a globalized world. We will focus on the global economic order and on climate change and examine whether these aspects of globalization provide us with new reasons to value our relationships with distant others. In the final section, we will consider whether Christian Barry's 'vulnerability presumption principle' (Barry 2005a, 221) can help us in answering these questions.

3.2 General and special obligations

How is the distinction between negative and positive duties reflected in our moral outlook? To begin with, in common sense morality we distinguish between *general* and *special* obligations. The former are owed to everyone equally, on the basis of our common humanity. Human rights seem to provide the most evident basis for these general obligations. As for the negative duties entailed by human rights, i.e. the rights to

noninterference, there seems to be no problem. For example, it seems inconceivable to deny someone the right not to be killed, except in very extraordinary circumstances such as self-defence.

Positive duties (i.e. duties of assistance), however, are much more controversial. Some commentators, for example Shue (1980), argue that we have a general obligation to fulfil the subsistence rights of distant others, even if this implies positive duties.⁸ According to libertarians, however, we bear no general positive obligations, as long as we did not previously make any promises or violate any negative duties (Narveson 1988, 59-60). Pogge is said to side with libertarians on the question of normative principle, for he does not argue that we have positive duties yet he tries to challenge the libertarians' factual claim that the affluent do not harm the world's poor by *causing* their poverty (Patten 2005, 20). Rather than explicitly endorsing a libertarian view, he takes up an ecumenical strategy in an attempt to convince proponents of all important schools of thought (Pogge 2005a, 95). By avoiding claims about positive duties, he seems to want to make clear that his argument does not depend on positive duties (Ibid., 93). We will return to this issue later.

As noted earlier, our *general obligations* are owed to everyone equally, on the basis of our common humanity, yet they do not seem to imply respect for *positive* human rights. We all bear the general obligation not to interfere negatively with another person. However, our general positive duties of assistance are less stringent and more problematic, from a motivational, and also – and more importantly – from certain theoretical points of view. Moreover, we face the difficulty of assessing *who* should bear those responsibilities, if we do not want to make the human rights discourse void of meaning. This difficulty is known as the 'allocation problem'. We shall come back to it later.

In contrast to general obligations, *special obligations* are owed only to some specific subset of persons with whom we have a special relationship, i.e. we do not bear them for everyone equally. We feel we owe more to our brother, a friend, or perhaps a fellow countryman, than to a distant stranger. In addition to negative duties of noninterference towards them, we *also* feel that we owe them duties of assistance. In other words, special positive obligations are less controversial than general positive obligations. No mother would refuse to share her food with her child, claiming that this would impose an unjustified infringement of her freedom, for example. Few people would deny the existence of such special positive obligations.

⁸ As discussed in the previous chapter.

Admittedly, general and special obligations often coexist without problem, but sometimes they *do* conflict. When this happens, should we be allowed to give priority to our special positive obligations and neglect our general ones? For example, should we be allowed to buy a birthday present for our son while other people are living in severe poverty? What exactly constitutes a special relationship and bestows compelling force to giving preference to it? Two types of answers have been given to this question: 'reductionist' and 'non-reductionist' answers (Scheffler 2001, 98).

Reductionists suppose that special obligations arise out of *specific interactions* that occur in the context of our relationships, such as promises, mutual interdependences or a notion of reciprocity. For example, we have a duty to take care of our elderly parents *because* they nurtured us when we were young. *Non-reductionists*, in contrast, believe this is 'one thought too many' (Williams 1981, 18). For them, the mere fact that we *value* a relationship with someone gives rise to a special obligation towards this person. The relationship *itself*, not some preceding interaction, is the source of the special responsibility we bear (Scheffler 2001, 100-104).

Does non-reductionism imply that *every* relationship that we value is *equally* morally significant? According to Wellman (2000, 552-554), the non-reductionist approach is vulnerable to objections when it tries to answer this question. If non-reductionists want to maintain that our intuitions about relations are what really matters, they cannot denounce racism or sexism. Some people place great value on their relationships with people belonging to the same group, which would establish special responsibilities towards that subset of persons. Yet Van der Vossen (2011, 489) rightly raises the following question:

Can we really accept that members of morally reprehensible communities may bring into being moral obligations to support and maintain those communities and practices simply by having certain attitudes? Surely it is not *that* easy to ordain unjust practices with moral quality.

Non-reductionists can try to avoid this conclusion by showing why the relationship with our compatriots may imply a special responsibility and our relationship with people of the same race or sex may not. Yet, in doing so they would have to point to other grounds *than the relationship itself* to explain this difference. Consequently, they would cease to defend a non-reductionist account. In sum, special responsibilities based on special relationships that one should not value cannot be refuted on purely non-reductionist grounds.

Non-reductionism also seems to face another problem. People do not only value relations they should not value (e.g. racism), but also do not value relations they should value. Some liberals reject every responsibility that one has not voluntarily accepted (the voluntarist objection), but can consent really be that important? If a mother does not think she has a special relationship with her child, does this imply that she bears no special responsibility for the child? Do we only have responsibilities for those we already have accepted responsibility for? Alternatively put, simply because we do not believe that our relation with distant strangers is special, does this mean that our failure to alleviate their severe poverty is acceptable?

3.3 A relationship one has reason to value

In his book *Boundaries and Allegiances*, Scheffler focuses on the responsibilities we bear as individuals in a globalized world. He believes that the changing circumstances of the modern world have resulted in a growing uncertainty about exactly what those responsibilities are. He holds that the restrictions imposed on individual responsibility, on the basis of a conception of human social relations as ‘consisting primarily in small-scale interactions, with clearly demarcated lines of causation, among independent individual agents’, have become questionable (Scheffler 2001, 39-40). He therefore claims that the restrictive conception of individual responsibility, embodied in common sense moral thought, is outdated.

Indeed, our special obligations do increasingly seem to conflict with our general obligations. As explained in the previous section, our negative duties regarding human rights are equally stringent on both accounts. However, our positive special obligations towards our friends and families seem to take precedence over our positive general obligations to satisfy the human rights of distant others. We feel ourselves torn between the values of loyalty and equality, while most of us cherish both (Scheffler 2001, 79). Scheffler tries to reduce this tension without giving dominance to either one of these values. Essential in this attempt is his non-reductionist defence of special responsibilities:

Among the things that we value are our relations with each other. But to value one's relationship with another person is to see it as a source of reasons for action of a distinctive kind. It is, in effect, to see oneself as having special responsibilities to the person with whom one has the relationship. Thus, in so far as we have good reasons to value our interpersonal relations, we have good reasons to see ourselves as having special responsibilities. (Scheffler 2001, 103)

Important here is that Scheffler considers these relationships to generate responsibilities *irrespective* of whether or not these relationships are *actually* valued. He does not deny the importance of choice or consent in determining which relationships matter, but refuses to ground all responsibility in our own decisions, ‘for the relationships that generate responsibilities for an individual are those relationships that the individual has reason to value’ (Scheffler 2001, 107). An important fact of moral duties thus seems to be that we are bound by them, ‘regardless of whether we happen to believe that we are or want to be’ (Moellendorf 2002, 35). Nagel (2005, 121) describes a similar idea in his characterization of the political conception of justice:

[...] though the obligations of justice arise as a result of a special relation, there is no obligation to enter into that relation with those to whom we do not yet have it, thereby acquiring those obligations toward them. If we find ourselves in such a relation, then we must accept the obligations, [...]

In this way, Scheffler tries to refute the voluntarist objection, raised by some liberals, in a non-reductionist way. The question as to whether he succeeds in this effort is difficult to answer, since Scheffler does not specify the exact meaning of ‘having a reason to value’ a relationship. His account appears to resemble Hardimon’s *principle of reflective acceptability* (1994, 348):

To say that a social role is reflectively acceptable is to say that one would accept it upon reflection. Determining whether a given social role is reflectively acceptable involves stepping back from that role in thought and asking whether it is a role people ought to occupy and play. Determining that a given social role is reflectively acceptable involves judging that it is (in some sense) meaningful, rational, or good.

Scheffler’s account resembles Hardimon’s, since both seem to imply that special responsibilities can be generated – upon reflection – *even without an actual consent*. However, their accounts diverge in that Hardimon specifies which *properties* establish a role (or relationship) as reflectively acceptable, viz. meaningful, rational, or good, whereas Scheffler does not aim to develop a detailed account of the responsibilities one might have.

Christian Barry and Holly Lawford-Smith (2012) outline a number of reasons that may generate *special* obligations and responsibilities, apart from the special relationships that we voluntarily enter into through contracts or promises. They mention special obligations we might have towards citizens of our (ex-) colonies (Ypi et al. 2009) and responsibilities we bear for people who are vulnerable to our actions (Goodin 1985). They

also ask whether we should be held responsible if we benefit from certain injustices distant others experience and in which we have thus become morally complicit (Barry and Lawford-Smith 2012, xiii).

As far as *general* obligations are concerned, we have already mentioned our common humanity as a good reason to value our relationship with the rest of mankind. We bear general obligations towards everyone, but, as we have seen, these are commonly held to be limited to negative duties that are derived from human rights, i.e. duties of non-interference. Grounding (enforceable) positive duties on our common humanity seems to be more problematic. Hinsch and Stepanians (2005, 303) explain why:

A human right [for example] not to suffer severe poverty seems to be a special right. In this type of right, all of us are *candidates* for the corresponding duties, but only some of us are actually bound. Because of the referential opaqueness of the term “some,” however, human rights of this kind give rise to what we call “the allocation problem,” i.e., the task of identifying the relevant duty-bearers and of specifying their concrete obligations. [...] universal complex rights to abstract values against anonymous “somebodies” have at best weak regulative force unless they are supplemented by a determination of their concrete addressees with their specific active duties.

In the following section, we will argue that *harm* should be used as the criterion when looking for a solution for this allocation problem.

3.4 Harm as a good reason to value a relationship

As mentioned in the introduction, we take the active violation of negative human rights as our *baseline* for determining harm. We believe that if one violates somebody’s human rights, one is, without any doubt, harming that person. In this section, we will examine how this conception affects the obligations we bear. Our obligations seem to be more stringent when we stand in some causal relationship to some other(s), including distant others. When we are, in some way, responsible for the situation of others, we are more likely to feel obliged to assist them (Dobson 2003, 171). Barry elaborates on this intuition in his formulation of a ‘contribution principle’. This principle is based on the aforementioned distinction between doing something and failing to prevent it. He considers the fact that we contributed to something to be ‘a normative factor of special significance for determining whether and to what extent [we are] responsible for

addressing it' (Barry 2005b, 107). In the context of acute deprivations, he characterizes our responsibilities as especially *weighty*:

there are strong moral reasons to refrain from contributing to others' acute deprivation regardless of any further connections that we may have to them, so that we cannot easily appeal to considerations of *cost* to ourselves to excuse our failure to act on them. (Barry 2005a, 212)

Referring to Linklater, Dobson (2003, 28) also emphasizes the importance of relations of actual *harm*. He describes harm as a source of political obligation and considers avoiding harm, or compensating for it, to be an obligation of *justice* rather than charity. He also argues that these obligations of justice are especially binding. Harming someone thus seems to be a very strong reason to value a relationship.⁹ We are in a special relationship with the people whose human rights we violate and we bear responsibility towards them, regardless of whether or not we actually value this relation. Even though many will fail to adopt this responsibility voluntarily, this does not exonerate us from it. As Nagel has put it: 'to treat someone else horribly puts you in a special relation to him' (Nagel 1972, 137). We cannot simply dismiss our obligations merely because we do not feel (sufficiently) motivated to accept them.

The distinction between 'obligations of charity' and 'obligations of justice' is important here. Pogge illustrates this distinction as follows:

Suppose we discovered people on Venus who are very badly off, and suppose we could help them at little cost to ourselves. If we did nothing, we would surely violate a positive duty of beneficence. But we would not be violating a negative duty of justice, because we would not be *contributing* to the perpetuation of their misery. (Pogge 2008, 204)

As stated in the introduction to this chapter, we hold that a failure to meet our negative duty not to harm generates obligations of justice. This is not to say that avoiding harm constitutes the alpha and omega of justice, but we agree with Pogge that respecting negative human rights is a necessary condition for justice (Pogge 2005b, 76). When we neglect a duty of charity to, say, feed a hungry child, we may be blameworthy for failing this duty, but we are arguably not failing to fulfil a duty of justice. When we are causally responsible for the malnutrition of that child and still fail to feed it, however, we are

⁹ We are not here presenting an exhaustive account of possible relationships, yet arguing that harm is a *sufficient* reason to value a relationship and generate responsibility.

acting unjustly. *Through the process of harming*, the *general* positive duty of *charity* of feeding the child becomes a *special* positive duty of *justice*. This is not merely a question of semantics; it endows the human right to food with more stringency and, thus, hopefully, more motivational power.¹⁰

Through the process of globalization we have become causally *interconnected* with virtually everyone. As such, this does not constitute a reason to value our relationship with *every* distant other. However, if we would turn out to be systematically *harming* others, this would generate a strong reason to value the relationship, namely a reason of justice. Accordingly, *the harm we inflict gives rise to a special obligation to a very large subset of persons, with a potentially universal scope*.

3.4.1 Does our economic interdependence constitute a reason to value relationships?

Darrel Moellendorf (2002, 30-8) uses the concept of ‘global association’ as the starting point for his theory of global justice. He argues that duties of justice are special, generated by associational reasons, for example when people are connected through politics or commerce. If the institutions that govern those practices have a substantial impact on the highest order moral interests of people, they give rise to duties of justice on a global scale. To assess this impact, he focuses on people’s life prospects and concludes that these differ immensely based on the location of one’s birth. We largely agree with Moellendorf’s account,¹¹ but, as noted in the introduction, the benchmark that we propose, following Pogge, is harm through violating human rights.

In *World Poverty and Human Rights* Pogge argues that we, the global rich, are harming the global poor through the global economic order we uphold. We are not merely failing to fulfil a *positive* duty of charity or assistance; we actively violate our *negative* duty not to harm other people. Our economic order foreseeably and avoidably causes human rights deficits and everyone who participates in its creation or imposition consequently harms those affected negatively (Pogge 2008, 25-26). If this is the case, we would have a strong reason to value our relationship with the global poor and to shoulder the special responsibilities resulting from that relationship.

Pogge supports his claim by pointing to two privileges that appear to play an important role in the active violation of our negative duty, namely the international borrowing

¹⁰ On the relation between moral judgment and motivation, see Rosati (2006).

¹¹ See our discussion in the previous chapter.

privilege and the international resource privilege. Both rely on the fact that our representatives in international negotiations, our governments and most corporations tend to regard leaders of other countries as legitimate representatives of their people – irrespective of how they came to power, how they exert it, or the extent to which they are supported by their domestic population (Pogge 2008, 118). Let us look at each of these privileges in turn.

The *international borrowing privilege* focuses on the right that the international community grants to rulers to borrow money. Pogge mentions three important adverse effects of this privilege (Pogge 2008, 120-121). First, it enables rulers to remain in power, since it allows them to borrow much more and more cheaply. They can use this money as they please, which sometimes boils down to paying militias to oppress popular opposition. Second, coup attempts and civil wars become more attractive. Whoever succeeds in a coup gets the borrowing privilege as an important bonus. The third effect regards the situation after a dictatorship has been overthrown. The succeeding government is very likely to be crippled by the huge debts made by the ousted despot and to be incapable of implementing the necessary reforms. As such, the international borrowing privilege continues to harm the people, even after the oppressive regime has been overturned.

The *international resource privilege*, in turn, not only recognizes the effective control that those in power have over the resources of their country, but also seems to legitimize this control (Pogge 2008, 119-120). When a company buys resources from a corrupt despot, it becomes the legitimate owner of those goods, regardless of how the despot came to power or what he does with the money acquired through the sale. As history has repeatedly shown, the resource privilege provides a strong incentive for coup attempts and civil wars in resource-rich countries, which is an aspect of the ‘resource curse’ (Auty 1993). Similar to the borrowing privilege, the resource privilege financially rewards whoever successfully comes to power and provides them with the means to maintain their position. Therefore, Pogge (2001, 22) concludes that:

the underfulfillment of human rights in the developing countries is not a homegrown problem, but one we greatly contribute to through the policies we pursue and the international order we impose. We have then not merely a positive responsibility with regard to global poverty, like Rawls’s ‘duty of assistance,’ but a negative responsibility to stop imposing the existing global order and to prevent and mitigate the harms it continually causes for the world’s poorest populations. Because our responsibility is negative and because so much harm can be prevented at so little cost to ourselves, the reduction of severe global poverty should be our foremost moral priority.

The question arises, however, as to whether we are indeed failing to fulfil a negative duty, or whether, as argued by Patten (2006, 27), Pogge '[stretches] the concept of harm awkwardly to make space for duties of assistance [i.e. positive duties]?' Is the fact that a different economic order, which would cause less suffering, is possible, sufficient to support the claim that, in the current economic order, the affluent are indeed harming the poor? According to some commentators, this conclusion is too strong.

According to Mathias Risse, we should be reluctant to accept this conclusion in view of the meaning of 'feasible alternatives' (Pogge 2008, 26). Risse (2005a, 371) considers that Pogge mistakenly thinks that feasibility primarily concerns allocating money to developing countries. Risse argues that, in addition to money, *institutional improvements* are necessary and he points out that there is no consensus or 'royal road' (Kuper 2002, 117) in the social sciences on how to eradicate poverty (Risse 2005a, 373-375). We agree with Risse that the mere allocation of money will not be enough and that institutional improvements are necessary to ensure that the intended changes are sustainable. Paul Collier elaborates this point in *The Bottom Billion. Why the Poorest Countries are Failing and What Can Be Done About It*. He examines which role aid can play and concludes that aid alone will not solve the problems of the bottom billion, as some thinkers on the left seem to believe. However, against the right, he argues that aid is part of the solution, rather than the problem (2007, 123, 191). To reach this solution, complementary institutional changes are needed. Focusing on money alone is no longer a viable option; we need to take the 'institutional turn' (Evans 2005). Collier mentions new trade policies, security strategies, international charters, and changes in the domestic law of rich countries as necessary conditions for effectively benefiting the poor. More specifically, Collier mentions, among other things, the importance of restoring order, maintaining peace and fighting corruption. Furthermore, democracy, budget transparency, and African trade liberalization seem to be crucial instruments for the intended poverty reduction.

Bearing this in mind, we do not agree that Pogge holds that allocating money will in itself eradicate world poverty. Risse unfairly criticizes Pogge for not focusing on specific mechanisms through which the global order inflicts poverty on developing countries. At the same time, we would submit that a related question needs to be addressed, namely, which conditions must be met before a measure counts as an *institutional* change? For example, why is the Global Resource Dividend (GRD) that Pogge proposes regarded as 'allocating money' rather than as an institutional reform? Under this scheme, states would be required to share a small part of the value of any resources they decide to use or sell. This payment would be used for the benefit of those who otherwise would be excluded from their proportional share of the world's resources, e.g. the global poor (Pogge 2008, 202). Risse might reply that this proposal is not sufficiently elaborated and that its chance of being successfully implemented is rather slim, because the necessary

institutions (e.g. a functioning democracy) are not in place worldwide. This seems to imply that the GRD is indeed best characterized as an *institutional* reform. Would the Health Impact Fund (HIF), a mechanism designed by Pogge and Hollis (2008) to optimize the development and worldwide distribution of (essential) medicines, count as an institutional change? Pogge and Hollis explicitly acknowledge that this proposal needs to overcome some difficulties of implementation, as we will discuss in the next chapter. Does this problem of implementation really exonerate the current order (and the people that impose it) of all charges of harm regarding access to medicines? As a third example, Pogge's plea for a world order without the international borrowing privilege and international resource privilege clearly illustrates that he does focus on institutional mechanisms and does not think allocating money is the final solution. Thus Risse's criticism seems undeserved.

For Pogge, the measures required for institutional reform constitute duties of *justice*, whereas Risse believes them to be duties of *assistance* in institution building. Risse emphasizes that we do not have a well-understood blueprint for eradicating poverty or successful development, which he believes to be necessary. This seems to imply that, for Pogge's claim that upholding the global order is harming the poor to be true, we would need to have an agreed and implementable plan of action at our disposal. However, it might be questioned whether such a fixed action plan is really necessary to make the concept of a 'feasible alternative' intelligible. Given the complexity of our modern world, we believe this condition might be too stringent. It seems that every course of action will always have both advocates and opponents. Correspondingly, it seems overly demanding to expect a full-blown plan of implementation for every proposal. We do not deny the importance of a broad consensus or viable implementation measures, yet we consider that Risse's use of the concept 'feasible alternative' is too stringent. John Rawls (1999, 12) has discussed this tension in connection with his concept of a 'realistic utopia':

I recognize that there are questions about how the limits of the practically possible are discerned and what the conditions of our social world in fact are. The problem here is that the limits of the possible are not given by the actual, for we can to a greater or lesser extent change political and social institutions and much else. Hence we have to rely on conjecture and speculation, arguing as best we can that the social world we envision is feasible and might actually exist, if not now then at some future time under happier circumstances.

However, in this respect Pogge and Risse again do not differ as much as one might expect. Risse (2005a, 376) admits that Pogge's claim is not entirely implausible. He concedes that the absence of a blueprint does not give us the right to rest on our laurels:

To be sure, this understanding of feasibility still does lead to an indictment of the global order if a case can indeed be made that not enough effort goes into exploring possibilities for and, if appropriate, implementing institutional change.

Yet how do we determine exactly when an alternative has enough support and when the probability of being implemented is high enough for it to count as ‘feasible’? How much agreement and information is needed before a relationship of harm can be said to be present? This is indeed a difficult question to answer. Risse correctly argues that we need a case-specific empirical analysis to discover how we can bring about institutional improvement (2005a, 373). When we take the individual as our ultimate unit of concern (Pogge 1992, 48), the urgency of the task of exploring avenues towards institutional improvement becomes clear. Even in the absence of an easily feasible alternative, it is clear, for example, that the current institutional framework regarding medicines is harming hundreds of thousands of people, as they cannot afford essential medicines because these are patent protected in accordance with the WTO TRIPS agreement (UN 2012). Alternatives, such as the Health Impact Fund, face opposition and will not be implemented without considerable difficulties. However, can this really serve as an excuse for the suffering of so many people under the current regime?

Our responsibility to implement the ultimate blueprint is somewhat meaningless, as such a blueprint clearly does not exist. Our duty to search for institutional improvements, however, remains solidly in place, although substantiating this duty is a difficult task. Which possibilities deserve to be further explored and to what extent? Secondly, which explored proposals are promising enough to be implemented and to what extent? There is no easy answer to these questions. For example, at the moment, the Health Impact Fund arguably does not yet enjoy widespread support and cannot yet be easily implemented. However, a pilot field test¹² might refine the scheme before it is implemented on a wider scale, and hence might improve the feasibility of the original, more comprehensive proposal. Recently, Janssen Pharmaceutica, part of Johnson & Johnson, has made a commitment toward a joint HIF pilot involving their new drug against multi-drug-resistant tuberculosis, bedaquiline. Janssen will contribute this drug at zero cost, with the intention of refining the measurement of health gains and the preservation of drug’s efficacy.¹³ This initiative does not in itself establish that HIF is a feasible alternative for the status quo. It does, however, show that the possibilities for institutional change have hitherto not been adequately explored.

¹² <http://healthimpactfund.org/next-steps>.

¹³ Personal communication from Prof. Thomas Pogge.

Risse is right to point out that there are numerous possible ways of improving the situation of the poor through institutional changes (2005a, 375). From this fact he infers that exploring possible institutional changes is a positive duty of assistance. However, since the current regime fails to meet even a minimal standard of human rights (e.g. access to essential medicines), it cannot be just (Pogge 2005b, 56). Searching for feasible alternatives for this unjust situation can no longer be characterized as a duty of assistance: the fact that we impose an institutional order that violates human rights gives rise to a relationship of harm and therefore a negative duty of *justice*. Only if no human rights were violated, would the duty to search for even better alternatives be a duty of assistance. Since Risse agrees that not enough has been done to explore and, if appropriate, implement institutional changes, and that the global economic order does harm the poor in this sense (2005a, 376), it is puzzling why he insists on calling the rectification of this situation a duty of assistance. We conclude that Risse's argument for doubting Pogge's claim that the global economic order is harming the poor, is unconvincing.

Robert van der Veen (2005) provides us with a *second reason* to question Pogge's conclusion. He attempts to rebut the claim that the affluent are harming the poor by pointing out three options we have regarding the current global economic order: we can sustain the status quo; we can improve it to alleviate suffering; or we can worsen it. If we *worsen* the situation, we are definitely violating our negative duty not to harm others. If we merely *sustain* the status quo, we are failing our positive duty to improve the situation of the global poor and are thus blameworthy, but not in the same sense as we would be if we had aggravated the situation. The longer we fail to fulfil our positive obligation to improve matters, the stronger its claim on us becomes, but it cannot suddenly switch from a positive to a negative obligation. Our obligation of *assistance or charity* then admittedly becomes more urgent, but it does not evolve into an obligation of *justice*.

Thus, although a morally superior global economic order is possible, *not improving the status quo does not amount to violating our negative duty not to harm*, according to van der Veen. Therefore, he believes that merely sustaining the status quo without reforming global economic institutions is *not* sufficient to constitute a harm-based reason to value our relationship with the global poor and to bear special responsibilities for them. This argumentation needs to be elaborated further. After all, it is not self-evident why we should take the *current* global economic order as the significant benchmark for harm, i.e. the harm-neutral position.

Risse (2005b) distinguishes three different possibilities. The *first alternative benchmark* is to compare the current situation to the past. Risse does not deny the World Bank's grim figures on current poverty levels. However, he refuses to conclude that this in itself

proves the global order to be unjust. Looking back in time, he reaches a more positive conclusion (Risse 2005b, 11-12):

what is remarkable is not that so many now live in poverty, but that so many do not; not that so many die young, but that so many do not; not that so many are illiterate, but that so many are not. By and large, if one looks at the last 200, 100, or 50 years, things have improved dramatically for the poor.

Risse (2005b, 12-15) acknowledges that this benchmark is not flawless. As Pogge rightly argues, we could after all be harming others although their situation has improved throughout history.¹⁴ A 'system' under which men beat the members of their family less than before cannot therefore be called just (Pogge 2008, 23). van der Veen faces the same objection, although his account is historical only in a weak sense. For example, if a certain, already existing, WTO-rule or treaty harms distant others and we fail to change it, are we really exonerated of harming those people because we are merely sustaining the status quo? Let us now consider whether the other two possible benchmarks could provide a way out.

As a *second alternative*, Risse mentions a counterfactual reference, namely comparing the current situation with a situation in which the global order did not develop as it did. How would the global poor fare if Africa had never been colonized? If they would be better off, the global economic order as we know it would in fact be harming them, according to this benchmark. This question, however, seems impossible to answer, as Risse correctly points out. Since there is only one world with one history, we have no meaningful point of comparison. Consequently, this benchmark cannot be invoked to challenge Pogge's claim (Pogge 2005b, 56).

Risse's *third alternative* is a benchmark of fairness. Here the current order is compared to a 'state of nature' characterized by a fair distribution of resources. As the status quo is characterized by an uneven distribution and radical inequality, from the perspective of fairness the global economic order seems to harm the developing countries. However, according to Risse, this comparison can only show that the current distribution is not even, but not who is to blame for this. For example, it is not inconceivable that the

¹⁴ We in no way deny that the global economic order, based on free trade, has improved the situation of the poor significantly. However, many human rights are being violated under the current regime and we believe a less harming alternative is feasible. To get a sense of what this alternative order might look like, see for example Collier (2007).

unequal distribution is the result of a sequence of entirely voluntary transfers.¹⁵ Risse (2005b, 14) concludes:

the historical benchmark is the only benchmark among the three considered that we can make sense of, and in relation to that benchmark the global order has brought tremendous advances. Moreover, advances in medicine and food production are largely due to countries that have shaped that order. So, *as far as we can tell*, the global order has benefited the poor.

Even if we grant Risse that only the historical benchmark is workable, we need not embrace his optimistic outlook. Once we look past ‘aggregates and averages’ and focus on ‘individual lives lived near the bottom’ his account loses much of its force (Pogge 2005b, 56-57). China and India have gone through a period of significant economic growth and the world’s population has also increased. As a consequence, the percentage of global poor has indeed diminished. The fact however remains that, in absolute terms, the number of extremely poor people has increased since the beginning of the 19th century (Chen & Ravallion 2001, 290). Their suffering continues. Whether or not we are violating our negative duty not to harm distant others through upholding the global economic order thus seems to depend on the interpretation of the historical benchmark that we use. In relative terms, Risse may well be right to argue that the global poor have benefited from the global economic order. However, when we look at the absolute numbers, Pogge’s claim is strengthened (Pogge 2008, 24). In Section 3.5 we will elaborate on a way to decide which interpretation of the historical benchmark we should favour. For now, we will conclude that upholding the global economic order *can* worsen the situation of distant others and *can* give rise to a special obligation of justice, depending on the benchmark one selects.

3.4.2 Does climate change constitute a good reason to value relationships?

Key to the argument sketched above is the condition of *not actually worsening the situation of distant others* when we sustain the status quo. In absolute terms, we have reason to believe that upholding the global economic order *is* harming distant others. When we focus on relative numbers, however, this conclusion is not self-evident. The question which we wish to raise now is *which conclusion should be drawn when sustaining the status quo*

¹⁵ If one favors historical principles over end-result principles, as Nozick (1974) does in his entitlement theory, an unequal distribution need not be unjust.

does worsen the situation of distant others beyond any reasonable doubt. We will address this question with reference to the case of climate change.

The adverse effects of climate change on human life include, *inter alia*, increased mortality (related to, for example, the increased frequency and magnitude of heatwaves), food and water insecurity, the spread and exacerbation of diseases, conflicts resulting from resource scarcity, and increased migration (Confalonieri et al. 2007, McMichael et al. 2008; Costello et al. 2009; McMichael & Lindgren 2011). In this way, anthropogenic climate change jeopardizes the human rights to life, physical security, subsistence and health (Bell 2011, 100) for current and future people alike. In the climate case, doing nothing to improve the status quo thus indeed seems to worsen the situation of distant others and to violate their human rights.

Through our part in the process of climate change, we are violating the human rights of a specific and large subset of persons, hence we bear a special responsibility towards them. We are violating our negative obligation not to harm those distant others and we are under a binding obligation to transcend the increasingly harmful status quo. At the least, we bear the stringent obligation of justice to recompense those harmed and to implement the required reforms. Our responsibility in causing the harmful effects of climate change is beyond any reasonable doubt (IPCC 2013).

3.5 The burden of proof

Up to this point we have tried to establish whether or not we are harming people through the global economic order and climate change. We found that, concerning the economic order, the data are not entirely conclusive. On purely empirical grounds, the data used by Risse to defend his cause are as sound as those used by Pogge, given the complexity of the global economic system. So how should we proceed in this case? Concerning climate change, the harmful relation is more difficult to deny. However, grounding our special responsibilities on such an all or nothing mechanism seems incautious. The globalized context we live in is characterized by a multitude of causal connections and a diffusion of responsibilities, as Scheffler has pointed out (2001, 38-40). Demanding indisputable evidence of harm thus becomes a risky strategy, as these situations are seldom clear cut. In this way, we might be attaching too much importance to the demonstrability of harm. The danger exists that people are left to fend for themselves because they are unable to prove beyond any doubt that they are being harmed.

Barry (2005a, 213-221) has attempted to address this problem by establishing fair standards of application for the so-called contribution principle, i.e. the principle that the obligations we bear are more weighty if we have contributed to a harmful situation. He distinguishes between three different standards of application. The first is the *burden* of proof, i.e. the question who has to provide the proof. The second is the *standard* of proof, i.e. the question how much proof is considered decisive. The third standard refers to the constraints on admissible *evidence*, i.e. the question what kinds of evidence will count as proof. The way these questions are answered can have a huge impact on the parties involved. Yet, as Barry concedes, there is no clear way of establishing whether these standards are fair. What counts as an appropriate standard depends on the context. In the context of a criminal trial, for example, the standards of application should be quite stringent to avoid punishing the innocent. Nonetheless, Barry (2005a, 216) rightly doubts whether we should extend such stringent standards to other areas of practical deliberation.

The degree of stringency of the standards, in Barry's view, may result in one of two errors. Either the accused is *falsely believed to have contributed* to the deprivations or harm (Type 1 error), or he is *falsely believed not to have contributed* (Type 2 error). The stringency we adopt depends on the importance we attach to avoiding either type of error (Barry 2005a, 216-217). If we use extremely weak standards of application, some accused can be wrongfully convicted. If we use extremely strong standards, some accused can be wrongfully exculpated, and consequently some victims will remain uncompensated. So how can we determine the appropriate degree of stringency? Barry has formulated a special principle to help us make this choice in an ethical context, the 'vulnerability presumption principle' (2005a, 221):

Given the relative costs to [party A] and [party B] of Type 1 and Type 2 errors, I conclude that there is a strong *prima facie* case for specifying standards of application for applying the principle of contribution *that expresses a willingness to err in favour of the acutely deprived subjects*, whether they are the party alleging that they have been harmed or the party against which such claims have been made. I shall call this norm the "*vulnerability presumption principle*." While implausible as a principle for specifying standards of application in a criminal (and most likely in most civil) legal contexts, or as a principle for assessing ethical responsibilities more generally, the vulnerability presumption principle seems clearly superior to stringent standards of proof and evidence with respect to the determination of ethical responsibilities to address acute deprivations.

If we apply this principle to our argumentation so far, the need to be cautious becomes obvious. Regarding Pogge's claim that we are actively violating our negative duty not to

harm distant others, we concluded that the validity of his claim will depend on which interpretation of the historical benchmark is used. Therefore, one could claim that we only bear *duties of charity* in delivering the positive human rights of distant others. We could say that we bear no special positive *duties of justice*¹⁶ towards them, as we (arguably) did not harm them, given the stringent standards of application that are normally used to establish harm.

However, given the current situation, we would submit that *Barry is right to argue for less stringent standards*. Admittedly, his ‘vulnerability presumption principle’ quoted above cannot refute the libertarian argument that, relying on *relative* numbers, we owe the poor no positive duty of justice. Libertarians can choose to maintain stringent standards and so deny the legitimacy of special positive duties of justice, claiming that they do not harm anyone. However, in doing so, they would have to explain why they continue to use stringent standards for establishing harm. It seems reasonable to expect that their growing awareness of the demandingness of their own standards of application would pave the way for their accepting stronger positive duties of charity. A libertarian can maintain very high standards of application and thus deny that we are harming the global poor in upholding the global economic order. He can deny that we bear a positive obligation of justice to deliver on their human rights, since we did not violate their negative rights. However, in *absolute* terms, we are indeed harming distant others and there is no reason why we should prefer the relative numbers. To the contrary: ‘The killing of a given number of people does not become morally less troubling the more the world population increases. What matters morally is the *number* of people in extreme poverty’ (Pogge 2005a, 92). Barry’s vulnerability presumption principle raises further doubts about the legitimacy of focusing on relative numbers and, at least, makes a case for accepting stronger positive obligations of charity or assistance to deliver on human rights.

When we turn our attention to the second case discussed above, i.e., global climate change, Barry’s principle seems to support a positive special obligation of justice. The evidence supporting the claim that we are harming distant others through climate change is stronger than it is for a similar claim regarding the global economic order. The former claim can thus withstand higher standards of application. Moreover, as climate change especially harms the global poor and thus the most vulnerable (World Bank 2013b), even a lower standard of evidence would suffice to establish a relationship of harm. For both these reasons, Barry’s vulnerability presumption principle strengthens

¹⁶ On the issue of *remedial responsibilities*, see Miller (2001; 2007). This issue falls outside the scope of this chapter.

our argumentation: we do bear a positive special obligation of justice to remedy the situation of everyone affected by climate change.

3.6 Concluding remarks

Our framework for this chapter was the responsibilities approach to human rights, focusing on the question ‘who must do what for whom’? We distinguished between negative and positive human rights and the corresponding duties of noninterference and assistance. We then examined how these fit in with the common sense distinction between general and special obligations. We found that duties of noninterference seem to be valid for both general and special obligations, whereas duties of assistance are more controversial.

We examined whether this common sense view can be ethically justified and started our analysis with Scheffler’s non-reductionist claim that positive special obligations are based upon relationships that one has reason to value, irrespective of whether or not these relationships are actually valued. The process of globalization has given rise to new reasons to value certain relationships and to bear new special responsibilities. We distinguished between obligations of charity and obligations of justice and we invoked the criterion of harm as the decisive benchmark.

Subsequently, we applied this framework to two cases: the global economic order and climate change. We argued that sustaining the global economic order can violate our negative duty not to harm others, but that this conclusion depends on the particular interpretation of the historical benchmark. Failing to mitigate climate change, in contrast, does entail a violation of our negative duties, for it actively causes harm and worsens the situation of distant others. Therefore, we have a reason to value our relationship with those who are adversely affected by climate change and we bear responsibility for them, even if we do not feel (sufficiently) motivated to assume such responsibility. The harm we cause through climate change thus grounds positive special obligations of justice to remedy this situation. Taking into account the harm we actually cause, gives rise to a special obligation to everyone who suffers because of that harm.

By using harm as the criterion to solve the allocation problem (i.e. the question of who should deliver on human rights), we switched from a weak to a strong sense of human rights. If a relationship of harm is established, fulfilling positive duties is no longer a matter of general charity, but has become a special obligation of justice. Accordingly, human rights and corresponding obligations gain important normative weight.

Finally, we should like to note that using harm as the decisive benchmark requires caution, since whether or not something is considered a harm determines the status of the corresponding positive duties and, consequently, their normative force. Barry's 'vulnerability presumption principle' can play an important role in this regard. It strengthens our account of characterizing the positive duties of mitigating climate change as special obligations of justice. With respect to the global economic order, however, the vulnerability presumption principle could act as a tiebreaker. If we are considering whether to interpret the historical benchmark in relative or absolute numbers, Barry's principle could convince us to favour the most vulnerable. It urges us to concede that we are indeed violating our negative duties and that we therefore bear special obligations of justice. For those who still want to continue using the relative interpretation of the historical benchmark, Barry's vulnerability presumption principle should make them aware of the strict standards of application they use and the fact that this indicates their willingness to *err at the expense of the global poor and the most vulnerable*. At the least, Barry's principle seems to provide all of us with a strong reason to accept stronger positive obligations of charity or assistance to deliver on human rights.

We have now discussed in a quite general way how two particular 'outcomes' of globalization have changed our responsibilities, even under a minimalist conception of global justice. In the next chapter, we will illustrate the possible tension between globalization and the fulfilment of human rights in a more specific way, by conducting a case study. We will focus on the global governance regime designed to regulate intellectual property rights (especially patents) and the effects this regime has for the global fulfilment of the human right to health (especially access to medicines).

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Chapter 4 The lack of access to medicines and the Health Impact Fund scheme¹

The task is huge. Take Africa. It has 34 of the 50 poorest countries in the world and suffers 24% of the global disease burden. It has just 3% of the world's health workers. [...] Two thirds of all people living with HIV live in Africa. In Africa, a child dies of malaria every 30 seconds. (Witty 2009, 1)

4.1 Introduction

In this chapter we will conduct a case study on the global governance regime designed to regulate intellectual property rights to illustrate the possible tension between globalization and the fulfilment of basic human rights. Whereas the previous chapter assessed our responsibilities regarding globalization in a rather general way, we want to end Part I by examining one specific aspect of globalization in more detail.

In August 2008, Thomas Pogge and Aidan Hollis launched a proposal for a Health Impact Fund (HIF), a scheme to facilitate the introduction of new medicines aimed primarily at diseases of the developing world (Hollis & Pogge 2008).

¹ This chapter is based on the following book chapter: De Smet, Andries, Sigrid Sterckx, and Julian Cockbain. (2013) "The lack of access to medicines and the Health Impact Fund scheme." In *Genomics and democracy: towards a 'lingua democratica' for the public debate on genomics*. Edited by Peter Derckx and Harry Kunneman, 151-170. Amsterdam-New York: Rodopi.

This chapter aims to provide some background to the access to medicines crisis, to give a brief overview of some suggestions for promoting access to medicines in poor countries, to explain the HIF mechanism and to discuss some of its perceived advantages and shortcomings vis-à-vis alternatives.

Although we conclude that many hurdles have to be overcome and that the HIF scheme needs improvement, we strongly support any attempt to improve healthcare in the developing, and indeed the developed, world. The HIF scheme contains several important elements towards a solution.

4.2 The access to medicines crisis

The developing world faces several problems in relation to disease (Pécoul et al. 1999): there may be no medicines effective against the disease because of a lack of R&D; many of the existing medicines are toxic and/or out of date and/or not adapted to the circumstances on the ground; problems of resistance are widespread; the available medicines may be too expensive for the patients or the country to afford; there may be no efficient system for ensuring that the appropriate medicines reach the patients; and lack of education, prejudice, hunger or insanitary conditions may cause disease to be more serious or prevalent than would be the case in an industrialised country. Of these different problems, perhaps only the last is beyond the ability of pharmaceutical companies (hereinafter 'Pharma') to address. None are beyond the ability of national governments, perhaps with the assistance of supranational governmental institutions, to address.

More than a third of the world's population has *no access* to essential drugs. More than half of this group of people lives in the poorest regions of Africa and Asia.²

Poor countries are smitten with infectious and parasitic diseases, while in rich countries these diseases represent but a small fraction of the disease burden (measured in so-called *Disability-Adjusted Life Years* or DALYs). Meanwhile, the concept of the so-called '10/90 gap' – i.e. less than 10% of the total health-related R&D is devoted to the

² See www.who.int and data from Médecins Sans Frontières (website of the campaign for access to essential drugs: www.accessmed-msf.org).

major health problems representing 90% of the global disease burden –³ has become widely accepted in theoretical analyses of the problem, but those who suffer from the conditions in question see little change.

Between 1975 and 2004, 1,556 new chemical entities were introduced to the market globally. Only 20 of these – i.e. a mere 1.3 per cent – were for tropical diseases and tuberculosis, even though these represent 12 per cent of the total disease burden. This 1% ratio has remained unchanged over the last three decades (Chirac & Torreele 2006).

Even though the admirable and highly professional policy advocacy work of Non-Governmental Organisations like *Médecins Sans Frontières* (MSF) and others has resulted in important advances, radical changes are required to the current approach to incentivising pharmaceutical R&D, or this outrageous and absolutely unjustifiable situation will only deteriorate.

4.3 Pharmaceutical industry R&D and patenting

By Pharma's reckoning, to find and bring to market a new medicine costs in the region of \$1 billion. From the start of research until market launch may take ten years or so. Thus for example, in a policy statement of November 2007, GlaxoSmithKline, one of the world's most important pharmaceutical companies, commented:

The cost, time and risk in bringing a product to market is huge. For every 10,000 compounds that are tested for pharmaceutical activity, only 3 reach the market and then only one in every 3 drugs which reach the market is profitable. It costs on average around \$1.2 billion to bring a drug to market and typically takes 10-12 years. (GSK 2007, 2)

Even though these figures are heavily criticised for being highly exaggerated (Public Citizen 2003; Relman & Angell 2002), the risks and costs of drug development are indeed very significant. To make huge investments over a long period of time requires government financing (think of Kennedy and the first moon landing), a Bill Gates, or a

³ See <http://www.globalforumhealth.org>. For a critical discussion of the 10/90 gap, see <http://who.int/intellectualproperty/submissions/InternationalPolicyNetwork.pdf> and <http://www.bjmp.org/content/global-health-and-1090-gap>.

company which can see a reasonable chance of recouping the investment, generally through sales at a considerable profit facilitated by patent protection.

While the US, the EU and Japan together represent only 15% of the world population, they make up 87% of the global pharmaceutical market, which was forecast to be over \$735 billion in 2008 (IMS 2008). The corporate officers of public companies have a fiduciary duty to their shareholders, i.e. a legal obligation to optimise the value of the shareholders' investment. As a result, Pharma tends to invest in R&D for medicines which are effective against diseases or ailments suffered by a large number of patients in industrialized countries who, directly or through health insurance or national health systems, can afford to pay prices far beyond the capacity of the average citizen of developing world countries.⁴ Accordingly, R&D of medicines to treat diseases affecting predominantly or only the developing world is severely neglected.

Lack of access to medicines, not only in poor countries but also in many industrialized countries, is also linked with the operation of the patent system (Sterckx 2007).

To quote again from the speech of GlaxoSmithKline's CEO at Harvard Medical School, from which we also borrowed the opening quote for this chapter:

Our industry has treated IP [intellectual property, in this context patent law] as if it is written in stone. Yes it is vital but we shouldn't forget that IP is always a balance, a grand bargain, with society. (Witty 2009, 2)

Indeed, in the past, the patent laws of many countries did not permit drug substances as such to be patentable, only processes for preparing them. To "design around" such process patents, i.e. to invent alternative, non-infringing processes, was normally relatively straightforward, and so the pharmaceutical companies in such process-patent countries could produce cheaper, generic, copies of new medicines for sale in their own countries, in other 'only-process-patent' countries, and in countries where the originator company had failed to seek patent protection. A large proportion of the medicines sold in Africa were produced in this way by Indian companies for example.

However, in the *Marrakesh Agreement establishing the World Trade Organization* (1994), an Annex was introduced – essentially under pressure from the United States, itself under pressure from companies such as Pfizer – which requires all countries which would be

⁴ Bear in mind, for example, that the annual treatment cost with Herceptin ®, a medicine for the treatment of certain breast cancers, is about \$30,000.

party to the World Trade Organization to permit patenting of drug substances as such. This Annex, the Agreement on Trade Related Aspects of Intellectual Property, better known as the TRIPs Agreement (WTO 1994), means that in future the ability of generic pharmaceutical companies to sell affordable copies of new medicines will be severely restricted.⁵

4.4 Earlier proposals for addressing the lack of access to medicines

Several suggestions for addressing the lack of access to medicines have been made in the recent past and some are already in place. All are inadequate in one or more respects.

The most obvious solution for drug discovery and development is for it to be funded by *the government of the country whose citizens suffer from the disease in question*. For the developing world however, this is a pipedream as such governments generally have more pressing demands, legitimate or otherwise, on the money they may have.

To some commentators, it is equally obvious that ‘*big Pharma*’, in view of the ‘obscene profits’ it makes, should carry out such R&D as part of its obligation to the community. Again, however, this is a pipedream in view of the fiduciary duty of management to shareholders. To change this legal obligation would be possible, but would require international synchronisation and strict enforcement to avoid companies in one country being disadvantaged in competition against companies from others. Although desirable and attractive, this solution seems unlikely in the visible future.

Perhaps such R&D should be seen as a role for *academia and/or public research institutes*? After all, much if not most of the fundamental research underlying the pharmaceutical industry has been and is being done in this context (NIH 2000). However, academic research needs to be funded, and such funding comes from national governments, supranational institutions, industry and charities. Charity funding of R&D of medicines for neglected diseases is uncertain given the sums at issue,⁶ industrial funding is unlikely

⁵ With regard to the developments leading up to the TRIPs Agreement: see Sell (1998), Matthews (2002) and Drahos & Braithwaite (2002).

⁶ While the work of the Bill and Melinda Gates Foundation is to be strongly applauded, we cannot rely on such support to continue at the level required to address global health problems in full – a more structural solution is required.

for the abovementioned reasons, and state funding of this kind of R&D is either unlikely or is subject to the politicians' need to justify their actions to their electorate when facing re-election, i.e. uncertain. Moreover, even if basic research in academia to identify potential medicines is government financed, academia does not have the resources or skills, or even desire perhaps, to take a project through development, clinical trials and manufacturing. Thus, while academia and governments have a role to play, this alone is not enough to remedy the lack of access to medicines faced by hundreds of millions of people.

4.5 Currently proposed solutions

The solutions proposed until now essentially involve: (a) limiting patent protection; (b) compulsory licensing of patents; (c) voluntary licensing of patents (including patent pools); (d) parallel inducement; (e) orphan drug protection; (f) supranational funding of R&D; (g) advance market commitments; and (h) prizes. We will briefly comment on each of these schemes.

Option (a) – Patents

This represents the status quo – the patent system has worked to deliver medicines for diseases and ailments of the affluent and the military, but it is clearly inadequate to meet the needs of patients in the developing world or indeed the needs of those suffering from rare diseases anywhere in the world.

Option (b) – Compulsory licensing of patents

Before the entry into force of the WTO-TRIPs Agreement, many countries made it possible for licences to be granted to produce patented medicines even when the patentee was unwilling to grant licences voluntarily. One of the main developments instituted by TRIPs was a severe restriction of this ability. While some relaxation occurred with the so-called Doha Declaration on *The TRIPs Agreement and Public Health* (2001),⁷ compulsory licensing is still relatively unused and does not address the issue of encouraging R&D in new drugs.

⁷ WTO Document WT/MIN(01)/DEC/1, 20 November 2001.

Option (c) – Voluntary licensing of patents (including patent pools)

Patent holders may of course voluntarily license others under their patents. This may be attractive if the patentee does not wish itself to commit to R&D against a particular disease, while still wishing to keep the option open to benefiting from R&D success by the company that does, e.g. benefiting through royalties, access to cross-licences, access to compound libraries, etc. One way to achieve this is to create a patent “pool”, where a group of patentees commit to allow others access to their patents under conditions they are comfortable with. This is the scheme recently proposed by Andrew Witty, CEO of one of the world's foremost pharmaceutical companies, GlaxoSmithKline. Witty’s proposal, although a welcome development, was restricted to a shortlist of specified diseases, excluding HIV, and Witty notably stated that “[i]f – as we hope – something new comes out of such research the full benefits should go *solely* to the [least developed countries]. The terms and spirit of the pool should ensure this happens” (Witty 2009, 2, emphasis added). Unfortunately, this does not imply that benefits would be reaped by the poor outside the least developed countries.

For these reasons, the healthcare NGO *Médecins sans frontières* has rightly criticised GSK’s offer as inadequate to deal with the problem (MSF 2009).

Option (d) – Parallel inducement (including fast track review)

One of the more egregious proposals for improving access to medicines for the poor in the least developed countries, involves the reward of the originator company with an otherwise unrelated inducement. One suggestion has been priority review vouchers (Ridley et al. 2006) whereby the company obtaining market approval for a medicine against a neglected disease would receive entitlement to priority in US regulatory approval review for another medicine, e.g. one aimed at developed world diseases or ailments. This clearly gives the originator an unfair advantage in the developed world market. Another such proposal has been made by Professor John Barton of Stanford University and Jeff Kindler, CEO of Pfizer, in their letter of 13 August 2008 to the US Senate Finance Committee (Kindler & Barton 2008). One key to the Barton/Kindler proposal is that: “Developed-world nations would commit themselves to develop detailed mechanisms to ensure that their government pharmaceutical purchasing authorities pay an adequate price to encourage research” (Kindler and Barton 2008, 1). Translated, what Pfizer is asking for is that one inducement to carry out R&D for neglected diseases would be for developed world governments to refrain from using their purchasing power to negotiate downwards the prices Pharma wishes to charge in the developed world for *all* its products.

Option (e) – Orphan drug protection

This is also the status quo in the United States. It works to deliver medicines to treat rare diseases of the wealthy or those with health insurance, but it is not a solution to the needs of the developing world.

Option (f) – Supranational funding of R&D of medicines for neglected diseases

This proposal is exemplified by the Medical Research and Development Treaty (Love 2005). However, it relies on supranational commitment to support R&D as well as on modifications to patent laws and freedom to patent. Moreover, as Hollis and Pogge point out, it seems to give flexibility in funding allocation to an extent that would “enable governments to make resource allocations based on domestic political interests, rather than global health needs” (Hollis and Pogge 2008, 104).

Option (g) – Advance market commitments

This is the subject of the proposal that developing world governments should commit to ordering X million doses at a dose price of \$Y of a medicine to treat disease Z when the medicine is market-approved (Kremer & Glennerster 2004). This scheme faces three particular problems: the uncertainty as to whether the government will meet its obligation when the time arises; the risk that a competitor wins market approval first; and the uncertainty as to whether medicines delivered to the country will actually reach the intended patients if the local healthcare system is inadequate. Some may argue that the second problem, the risk of losing the race, is also faced by Pharma in normal practice – i.e. under option (a). However, a ‘me too’ drug may still sell well, especially if competitively priced, hence in normal practice Pharma does not face total loss by coming second to the developed world market. Under scheme (g), though, the first company to arrive on the market may capture all the available advance market commitments.

Option (h) – Prizes

The final option involves a system whereby Pharma is rewarded by a monetary prize for bringing a new medicine to market rather than (only) by the grant of a patent monopoly. One such system, which replaces patents, has been proposed by James Love, Director of

the NGO *Knowledge Ecology International*,⁸ and was introduced before the US legislators as the Medical Innovation Prize Act by Senator Bernard Sanders (Sanders 2007). However, being entirely non-compliant with the abovementioned WTO-TRIPS Agreement (1994), this scheme had a snowball in hell's chance of seeing daylight.

The prize is a tried and tested system, which was used for example with the determination of longitude in the 18th century.⁹ With regard to R&D of medicines for neglected diseases, if the prize would be awarded by a national government or charity, its availability on delivery would be doubtful in view of the uncertainty as to whether the government will meet its commitment when the time arises (again, as demonstrated by the case of longitude). Justifiable doubt would provide the management of Pharma with further bias, if more is necessary, against taking the decision to commit to R&D in relation to developing world diseases.

4.6 A new idea: The Health Impact Fund (HIF)

The HIF, as recently proposed by Thomas Pogge and Aidan Hollis, is essentially a supranationally-funded prize system intended to address the problem of affordable access to new medicines for diseases primarily affecting developing countries (Hollis & Pogge 2008).

Put very briefly, HIF involves a supranational body, majoritatively funded by developed countries, paying an annual prize for up to ten years to a company bringing a new medicine to market, with the size of the payment reflecting the reduction in global health burden attributable to the use of that medicine and with the medicine being sold at a pre-agreed and hence affordable price. As currently proposed, HIF does not preclude the company that has developed the drug or the 'originator company' from using its patents to exclude competitors, and so the originator's investment can be recovered by the combination of the profit component in the agreed price and the annual prize payments.

⁸ KEI is an organization committed, inter alia, to improving the availability of medicines and particularly to schemes involving supranational funding of medicine development or payment by prize rewards rather than by the grant of (patent) monopolies. See www.keionline.org.

⁹ In the 18th century, the British government offered a prize of £ 20,000 (about US\$ 4.5 M in today's currency) for an accurate means of determining longitude. The problem was solved by a clockmaker, John Harrison, working between 1730 and 1772. See Sobel (1995).

One key feature of the HIF is that the registrant company must commit to provide open licences to the relevant patents at the end of the reward period, i.e. within 10 years of market launch. A second key feature is the fact that no HIF reward is payable before the year after market launch. In these two features lie the two major objections to the HIF – that it does less than possible to maximise the availability of medicines at the most affordable prices and that it does little to ease the decision by Pharma to enter into an R&D project by reducing either the amount of money at risk or the period before investment is recouped if the project is successful.

4.7 The debate over HIF’s potential impact on the generic pharmaceutical industry

In an *earlier form* of the scheme, HIF was intended to require the originator to *permit generic competition from the outset* and thus the originator company would have recovered its investments through smaller profits on sales and a prize which took into account the impact of *both* the originator’s product and the generic copies.

In our view, introducing the pre-agreed price and permitting the use of patent monopolies represents a retrograde step in the development of HIF as the goal of HIF is to maximise reduction in global health burden, something which is facilitated by the downwards pressure on price that results from generic competition. The case of antiretroviral drugs provides a perfect example. In 2000, a year’s treatment course for HIV/AIDS cost more than US\$ 10,000 per person. At that stage, these so-called ‘first generation’ antiretrovirals were only available from the pharmaceutical companies that held the patents on these drugs. Currently, the most commonly used triple-drug antiretroviral treatment in the developing world costs less than US\$ 100 per year. The reason why the price of these drugs has dropped with 99% over a period of only six years is that these products were not under patent in several countries with pharmaceutical manufacturing infrastructure – e.g. Brazil and India. This enabled local manufacturers in those countries to legally produce generic versions of the brand name medicines patented

in developed countries. Moreover, those generic medicines could also be exported to other developing countries where the medicine was not covered by a patent.¹⁰

Pogge and Hollis's HIF scheme has attracted severe criticism from James Love of *Knowledge Ecology International*. Love, who has published his correspondence on the subject with Pogge and Hollis online (Love 2008a; 2008b), particularly criticises the stepping back from open licensing which occurred in the maturation of the HIF scheme.

Pogge and Hollis's main justifications¹¹ for modifying the initial form of the scheme were essentially that (a) the removal of a requirement for open licensing would make HIF more attractive to Pharma both to participate in and to refrain from challenging the scheme, and (b) HIF makes open licensing redundant as the registrant is incentivised by HIF to supply at the lowest price.

Even though the first of these arguments rings true, the second justification is clearly flawed. In this regard, it deserves repeating that generic competition has been shown in the field of anti-retrovirals to be able to bring prices down by 99% while GlaxoSmithKline in its recent offer to help access to medicines has merely offered to reduce prices in the least developed countries by 'at least 75%' (Witty 2009).

James Love has expressed particular concern about the effect of HIF on the generics industry, arguing that, as structured, the downwards pressure on price encountered where generic competition arises, would be reduced under HIF:

[T]he [...] HIF approach [...] would marginalize the generics industry in developing countries, make it harder to credibly threaten a compulsory license, raise the costs of generic suppliers (fewer economies of scale or scope), and make the political environment for [compulsory licensing] or UNITAID type [voluntary licensing] quite difficult. [...] Finally, it is only a minor virtue that the HIF would ask for an

¹⁰ Unfortunately, all this is changing as a result of the entry into force of the WTO-TRIPs Agreement, which forces all member states to grant product (and not only process) patents in all fields, including pharmaceuticals. See Sterckx (2007). Moreover, in view of problems regarding rapidly spreading resistance to first-generation treatments, patients receiving such treatments increasingly need to shift to newer drugs to which they are not resistant, but which are under patent and hence hugely expensive.

¹¹ Besides the two justifications mentioned, the following were also given: (c) the entry of generic competition would make it difficult to assess the HIF reward; (d) the problem of counterfeiting of medicines would be smaller, or would be more controllable; (e) distributors would not be tempted to trade in the higher profit margin versions of the medicine rather than the lowest price to customer version; (f) the registrant would be able to recoup a higher profit in countries able to bear a higher price and so would find the scheme more attractive; (g) registrants might fear misuse of licensed technology, i.e. for the preparation of things other than the registered medicine; and (h) registrants might be constrained in their ability to sublicense by their own licensors.

open license after ten years. For many products, the effective patent and product life is not much longer than this anyway, particularly given late product registrations in developing countries. (Love 2008a)

Indeed, by not mandating generic competition, HIF does not give a strong enough incentive to the registrant or the scheme administrators to drive prices down.

HIF also leaves some other important problems unaddressed and raises some new ones. These are briefly discussed in the next sections, before we turn our attention to HIF's main strengths in comparison with other schemes.

4.8 Problems resulting from HIF's linkage with patents

A company which owns or has licensed all relevant patent rights to a new medicine may register that medicine under the HIF scheme and thereby become entitled to a reward under the scheme for each of the first ten years, or each remaining year of the first ten years, following first marketing authorization. Accordingly, patents must exist for the medicine or its process of preparation or use. In view of this feature of the scheme, rewards are *not payable* on products deemed to be previously known or obvious modifications of known medicines,¹² or on medicines which are or are shortly to become off-patent.

Since a company wishing to benefit from the HIF scheme must make use of the patent system, it will have every incentive to use that system to exclude competing products, whether identical or not. Moreover, since the company must have patent cover for the medicine, the decision whether to register with HIF or not will be based on the comparison of the expected profit levels should the medicine be marketed conventionally with the expected HIF rewards if the medicine is HIF registered. For a medicine with a significant expected developed world market, e.g. one effective against cancer, heart disease or age-related diseases, it seems unlikely that HIF registration would occur.

¹² As such products would not meet the legal patentability requirements of novelty and inventive step – see Cockbain (2007).

4.9 Problems arising from the obligations HIF registrants must accept

In return for becoming eligible for the HIF rewards by registering a medicine, the registrant must agree to sell the medicine at a pre-agreed price, which will cover production costs but will have little profit margin. A HIF registrant must also agree to license others under its patents relating to the medicine after the ten-year reward period ends. Since the pre-agreed price covers production costs, the only incentive to reduce production costs is to increase sales and hence the medicine's impact on global health burden and thereby increase the reward the registrant may receive. However, once a company has begun sales of a patented medicine it has little incentive to change the production process, *unless* faced by generic competition, since regulatory approval problems may arise if the production process is changed. As we explained earlier, under HIF, generic competition is not foreseen until the ten-year reward period is over.

Where there *is* generic competition, for example in countries where no relevant patents exist or where the HIF registrant has elected not to seek market authorization, the health impact of the generic products will be ascribed to the registrant in assessing the HIF reward. Where no patents exist, generic manufacturers require no licences and so fall outside the control of the registrant and/or HIF. As a result, there may be some difficulty in determining the local sales volume of the generic products and this will complicate the calculation of the component of the HIF reward which is based on the health impact resulting from sales of generics.

Pogge and Hollis also propose that HIF registrants must accept to 'make a good faith effort to obtain market clearance wherever the product is needed' and to 'preauthorize the HIF to seek market clearance for the product wherever the registrant has failed to do so and to subtract the cost of this effort from the registrant's next health impact reward payment' (Hollis & Pogge 2008, 14). For products useful in many countries, the registrant is thus being asked to bear the costs of obtaining market approval in all such countries, either directly or through a reduced HIF reward, costs most likely to arise in the early years of the reward period. This potentially delays the time to break-even, making the scheme less attractive.

4.10 Problems resulting from the baseline calculation of the health impact

According to Pogge and Hollis, the health impact of a HIF registered medicine would be assessed as the *attributed incremental health impact* of the medicine measured as the difference between actual health and a baseline representing the expected health level projected from the actual health at medicine launch (or two years earlier) and, in this projection, excluding the contribution of the medicine (and any other medicines sold exclusively by the registrant). For non-communicable diseases, the impact would be assessed on the basis of the treated patients, e.g. as the increase in quality-adjusted life years (QALYs). For communicable diseases, the impact would include all other indirectly affected individuals. As Pogge and Hollis admit, this would make HIF the largest health assessment agency in the world.

Unfortunately, excluding *only* the medicine itself and any of the registrant's other products from the baseline calculation makes the HIF reward susceptible to reduction in the event that *other medicines targeting the same disease* are launched during the reward period. This may cause two problems to arise. Firstly, that the decision to commit to R&D is made more difficult in view of the likelihood of the HIF reward being reduced. Secondly, the registrant is incentivised to use the patent system to exclude or delay the arrival of competing products, either 'me-toos'¹³ or quite different products, or at minimum to require licence fees that counterbalance the HIF reward reduction. This would *not* achieve the goal of promoting access to medicines.

4.11 Problems regarding security of funding

As conceived, HIF would be funded by national governments committing to contribute a percentage of Gross National Income, e.g. 0.03%, over a period of at least 10 or 12 years. Before R&D is initiated based on an expectation of repayment by HIF rewards, or at least before development reaches phase III clinical trials, some certainty is needed of there being adequate sums in the HIF when the HIF rewards fall due. This involves reasonable certainty that enough countries commit and will meet their commitments and that the

¹³ A 'me-too' is a pharmaceutical which is closely similar, structurally, to an existing product, but which may have minor benefits, e.g. in terms of reduced side effects, enhanced uptake, etc.

numbers of medicines registered will not be so high that the size of the HIF rewards will be inadequate. Payments to HIF would effectively be foreign aid and since relatively few countries are generous with foreign aid, this may appear too uncertain to “pull” drug developers into the scheme.

If the governmental commitment required is limited to 10-12 years, as it is under the current proposal, then HIF would be essentially an incitement for a ‘single round’ of R&D - those reaching the market first will gain a large share, those arriving later may find that the fund is drying up when they ask for their rewards over their 10-year reward period. As not all new medicines arising out of HIF would reach the market at the same time, the HIF reward funding will have to be guaranteed over a longer period.

Finally, we turn to the strong points of HIF vis-à-vis other proposed schemes.

4.12 The attraction of HIF: the reward

The HIF rewards would be paid from a fund financed by contributions from countries party to the scheme, those contributions being a fixed percentage of the contributing country’s Gross National Income. The fund for each year will be divided between all HIF registered medicines currently within their ten-year reward period in proportion to the effect each has had that year on reducing global health burden. The fewer the eligible medicines, the larger the reward and vice versa. Since the decision to initiate R&D on a drug is generally taken about ten years before market approval, at the time of decision the company will have no means of knowing what level of HIF reward it might receive if it commits to start work on a medicine which would not be profitable if sold conventionally.

However, R&D expense escalates dramatically as the development progresses and by the end of phase II clinical trials, the time to market approval may be short enough to make the likely size of HIF reward more estimatable. Thus it may well be the case that HIF would encourage R&D to progress to *this* stage for products that would not be profitable with conventional sales. Some research and development into diseases of the developing world does take place already¹⁴ and HIF may stimulate the companies involved with such

¹⁴ GlaxoSmithKline, for example, has a research centre dedicated to diseases of the developing world and employing 100 research scientists in Tres Cantos, Spain (Witty 2009). Likewise, in 2002 Novartis set up the

R&D to bring products to the market by allowing the decision to enter the most costly stage of clinical trials to be made with a reasonable expectation of sufficient reward within a tolerable period.

Moreover, that reward, coming as it would from a supranational body, could be more confidently expected to materialise than would be the case where it was dependent on the continued existence of charitable funding or on the vagaries of national politics.

4.13 The attraction of HIF: a potential solution to the “last mile” problem

A very strong point of the HIF scheme is that it takes into account what Pogge and Hollis refer to as the “last mile” problem of ensuring delivery of medicines *to the patients* (Hollis & Pogge 2008, 71-81). It achieves this by making the HIF reward proportional to the measured health impact – if the medicine does not reach the patients, there cannot be a health impact and hence no HIF reward.

This is undoubtedly the most original and convincing aspect of the HIF scheme.

With this case study we conclude Part I of this dissertation, in which we looked at globalization and our responsibilities regarding global justice. In Part II we will turn our attention to the feasibility objections, i.e. suggestions that cosmopolitan justice should not be strived for because it cannot be attained. We will start by assessing feasibility objections at the level of the individual moral agent (chapter 5). Subsequently, in chapters 6 and 7, we will shift our focus to feasibility problems at the institutional level. Our

Novartis Institute for Tropical Diseases (NITD) in Singapore, an operation with over 100 researchers and supporting staff (see Novartis 2008). However, such efforts must be viewed with a smidgin of cynicism. According to Witty, the Tres Cantos centre is funded in part by its partners, the Medicines for Malaria Venture and the Global Alliance for TB Medicine Development, while the Novartis web-site identifies NITD's focus as being on Dengue fever, TB and malaria. While TB and malaria are indeed problematical in the developing world, TB is also a problem for AIDS sufferers and malaria also one for developed world tourists and military – *i.e. it seems that the focus is on medicines that may find a satisfactory conventional market*. As far as Dengue fever is concerned, it may be noted that in a talk at a conference arranged by *Médecins Sans Frontières* in London in June 2005, Dr Paul Herrling, Head of Corporate Research at Novartis, speaking about NITD, admitted that NITD was concentrating on diseases that had analogues, such as West Nile and hepatitis, for which there might be a conventional market for effective medicines.

context for this discussion will be the problem of climate change, as it presents a clear-cut case for the application of our minimalist conception of harm and injustice.

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Part II

Feasibility objections

Chapter 5 Moral disengagement and the motivational gap in climate change¹

5.1 Introduction

According to the Intergovernmental Panel on Climate Change (IPCC), human influence is *extremely likely* to have been the dominant cause of the observed warming of the climate system since the mid-20th century (IPCC 2013, 17). Continued emissions of greenhouse gases will cause further warming and changes in all components of the climate system, further resulting *inter alia* in sea level rise, increased frequency and duration of heatwaves, more frequent temperature extremes, and changes in precipitation patterns. Already occurring and future predicted impacts of these climatic changes on human life include increased mortality, food and water insecurity, the spread and exacerbation of diseases, conflicts resulting from resource scarcity, and increased migration (see for example Costello et al. 2009; IPCC 2014a; McMichael and Lingren 2011; Watts et al. 2015). Climate change thus jeopardizes the fundamental human rights of current as well as future people, including their rights to life, health, adequate food and water, adequate housing, and self-determination (Bell 2011, 100-102; 2013; Caney 2010; OHCHR 2009).²

The 2015 Paris Agreement on Climate change reaffirms the essential goal of holding the increase in global temperature to well below 2°C above pre-industrial temperature, while pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels (UNFCCC 2015, Article 2). However, current policy projections would see a warming

¹ This chapter is based on the following article: Peeters et al. “Moral disengagement and the motivational gap in climate change.” *Ethical Perspectives* (under review).

² Discussion of the so-called *non-identity problem* falls beyond the scope of this chapter, since non-philosophers rarely invoke such sophisticated arguments. Following *inter alia* Bell (2011, 104-108), Shue (2011, 293) and Vanderheiden (2008, 217-230), we would argue that future not-yet-born individuals will possess rights when they are born, even though their particular identities may not yet be determined today.

of 3.6°C by 2100, and the combined national mitigation ambitions (as expressed in the *Intended Nationally Determined Contributions*) would still lead to a median warming of 2.7 °C (2.2-3.4 °C) (Climate Action Tracker 2015). Also consider that in March 2015, only 32% of Americans reported to ‘worry a great deal’ about global warming or climate change (Jones 2015).

The predominant explanation for the inadequacy of these responses in the climate ethics literature refers to the ineptitude of our moral judgment system to identify climate change as an important moral problem (Jamieson 2006, 476-477; 2010, 436-437; 2014, 148-150; Markowitz and Shariff 2012, 243). Another explanation for the widespread inaction is compellingly defended by Gardiner (2006, 407-409; 2011a, 301-338), asserting that people face strong temptations to pass the buck onto future people, the poor and nature. Indeed, the opportunity costs involved in tackling climate change are perceived as daunting (Stoll-Kleemann et al. 2001, 107) and people likely prefer maintaining their consumption patterns.³ In this chapter, we will argue that these explanations are not mutually exclusive and illustrate that the complexity of climate change provides certain latitude for emitters to deploy *selective moral disengagement*. Such strategies of moral disengagement facilitate a reconstruction of climate change and one’s contribution to it, allowing emitters to maintain a consumptive lifestyle and to emit greenhouse gases, without having to accept moral responsibility for the resulting climate-related harms.⁴

Successfully abating climate change will depend on substantial actions undertaken by a broad range of actors, including international institutions, nation-states, corporations, and civil society organisations.⁵ We will nonetheless predominantly focus on individual emitters. Both in the literature and popular opinion, there are persistent doubts about the agency of individual emitters in tackling climate change – providing an important

³ Another explanation might trace the current inaction to ignorance about the anthropogenic causes of climate change and its harmful effects. However, following Vanderheiden (2007, 91), we believe that with five scrupulously researched and widely disseminated IPCC Assessment Reports, ‘claims to reasonable ignorance concerning anthropogenic climate change are fully implausible’, especially in the developed world where per capita emissions are highest.

⁴ Since we do not use *moral responsibility* in the basic desert sense, our account is not vulnerable to the objections of free will scepticists. Rather, we use it as the criterion underpinning the *Polluter Pays Principle*, which we would advocate as the core principle for distribution of the burdens involved in tackling climate change, although it should be supplemented to cover the remaining portion of climate change for which no moral responsibility can be identified – for example, for the past emissions of deceased polluters, non-anthropogenic climate change, and the greenhouse gases emitted to meet one’s basic rights (see also Caney 2010a). Further discussion of the distribution of the burdens of tackling climate change falls beyond the scope of this chapter.

⁵ It should also be emphasized that mechanisms of moral disengagement are deployed at all these levels to evade responsibilities.

explanation for the fact that ethical and political analysis has mostly focused on the role of nation-states and international institutions. Some of these doubts about individual agency are legitimate; but we argue that many of them rather correspond to moral disengagement.⁶

In the following section, we will therefore explain our assumptions about the extent to which individual emitters effectively have agency in abating climate change. Subsequently, we will illustrate how mechanisms of moral disengagement are being deployed in climate change to evade moral responsibility for climate-related harms. In the fourth section, we will discuss the relationship between moral disengagement and the two explanations for the current inadequacy of responses to climate change mentioned above. Before highlighting the main points of our argument in the conclusion, we will tentatively discuss some strategies for tackling moral disengagement and addressing the motivational gap.

5.2 The agency of individual emitters

In current carbon-dependent energy regimes, essentially everyone is *compelled* to emit greenhouse gases in order to fulfil one's basic rights; no individual can reasonably be expected not to emit these emissions and, to that extent, he or she cannot be identified as being morally responsible for climate change (Shue 2011, 309; Vanderheiden 2008, 72). However, this exemption does not hold for emissions that are the result of a profligate lifestyle, which can be easily foregone without sacrificing one's basic rights. Therefore, emitters should acknowledge moral responsibility for the contribution of their avoidable emissions to the harmful effects of climate change (Caney 2009, 179; McKinnon 2012, 100; Vanderheiden 2008, 72). Rather than treating this issue into any more theoretical detail, we will clarify it in the examples of energy and meat consumption.⁷

Consider first energy consumption: Gardner and Stern (2008, 20-21) mention that US households account for about 38% of national carbon emissions through their direct

⁶ See Peeters et al. (2015).

⁷ Shue (1993, 55) has famously made a differentiation between *subsistence* and *luxury* emissions. This terminology and the distinction are contested (see for example Gardiner 2004, 585-6). Nonetheless, we agree with Shue that to ignore such distinctions altogether is to discard one of the most fundamental distinctions in ethics, namely the distinction between needs and wants. Moreover, even though differentiating between different sources of greenhouse gas emissions remains an important line-drawing problem, 'both extremes of this spectrum are abundantly clear' (Shue 2013, 392, footnote 32).

actions, constituting ‘a huge reservoir of potential for reducing carbon emissions and mitigating climate change that can be tapped much more quickly and directly’. They have composed a *short list*, consisting of 9 immediate, low-cost actions regarding transportation and living by which individuals and households in the US can reduce their total direct energy consumption. Dietz et al. (2009, 18452-18456) similarly identify a *behavioural wedge*: some effective, nonregulatory behaviourally oriented policies and interventions can reduce US national emissions by 7.4% with little or no reduction in well-being. Some frequently mentioned actions include: maintain correct tire pressure, alter driving (avoid sudden accelerations and stops), reduce highway speed, temper heating and air conditioning, use only warm (or cold) water for clothes washing, dry clothes on a line, and switch from bathing to (short) showering.

It should be noted that many poor people do not have a reasonable alternative for fossil fuels or wood to cook their food or irrigate their crops, which implies that they depend on the emission of greenhouse gases to realise their basic rights. Nonetheless, the fact that energy consumption can significantly be reduced by behavioural changes with little or no cost indicates that a substantial amount of greenhouse gases emitted by the global consumption elites is the result of a profligate, wasteful way of life.

Also consider meat consumption. The Food and Agriculture Organization of the United Nations estimates the total greenhouse gas emissions from livestock supply chains to be 14.5% of all human-induced emissions (Gerber et al. 2013, 15). This is most likely a conservative estimate, since other analyses show figures as high as 51 per cent for the total contribution of livestock and by-products to annual worldwide greenhouse gas emissions (Goodland & Anhang 2009, 11). In any case, a transition to a low-meat, vegetarian or vegan diet would substantially reduce greenhouse gas emissions, mitigation costs and land use requirements for food production (Garnett 2009; Scarborough et al. 2014; Stehfest et al. 2009).

Again, it should be clear that in societies where access to a nutritionally varied selection of foods is limited, and where there are serious problems of *mal-* and *under-nutrition*, keeping a goat, a pig, or a few chickens can make a critical difference to the adequacy of people’s diet (Garnett 2009, 497). These people cannot be expected to surrender their consumption of animal products needed to meet their basic rights, and can therefore not be held morally responsible for the effects of these emissions. In contrast, the meat intake of the global elites can be characterized as *overconsumption* and *over-nutrition*. For these people, adequately nutritional plant foods are sufficiently available, and dietary changes are thus perfectly feasible (Garnett 2009, 496-497).

In sum, although individuals depend on the emission of a certain amount of greenhouse gases to lead decent lives, a substantial amount is the result of a profligate

lifestyle (including wasteful energy consumption and the overconsumption of meat). Individual emitters can easily avoid these emissions by choosing one of the alternatives that are readily available, or by changing one's habits and behaviour. Since these emissions are subject to choice of and control by individuals, they can be held responsible for them. In the following section, we will argue that claims to exonerate emitters from moral responsibility for the consequences of their wasteful emissions are unconvincing and rather correspond to moral disengagement.

5.3 Mechanisms of moral disengagement in climate change

According to Albert Bandura (1991, 68, 71-72; 1999, 193-194; 2002, 101-102), moral conduct is motivated and regulated by the on-going exercise of self-reactive influences, which keep conduct in line with personal and societal standards. People ordinarily act in ways that generate satisfaction and a sense of self-worth, but refrain from behaving in ways that violate their moral standards because such conduct will bring self-condemnation. Nonetheless, there are a number of socio-cognitive processes by which people can dissociate moral self-reactions from their conduct. These processes, known as *mechanisms of moral disengagement* enable people to engage in activities that serve their self-interest, but violate their moral standards by inflicting harm, without having to face the restraints of self-condemnation (see also Bandura et al. 2001, 126-127). A substantial body of evidence has indeed demonstrated the disinhibitory power of moral disengagement (see for example Bandura 1999; 2002; 2007; Bandura et al. 2001; Barsky 2011; Bersoff 1999).

A few notable exceptions notwithstanding,⁸ the deployment of selective moral disengagement remains underexplored in the climate case. We will follow Bandura's well-developed taxonomy to illustrate how the different strategies are deployed in the case of climate change. Rather than attempting an exhaustive overview, we will mainly focus on some well-documented instances of moral disengagement in the climate change literature and public discourse.

⁸ Some of the illustrations Bandura discusses in his seminal article of 2007 to argue that selective moral disengagement impedes ecological sustainability apply to climate change. In addition, Stoll-Kleemann et al. (2001) provide empirical evidence of similar psychological processes in focus group research in Switzerland. Markowitz and Shariff (2012, 244) mention a *guilty bias*: to allay negative recriminations, individuals engage in biased reasoning to minimize perceptions of their complicity.

5.3.1 Mechanisms of moral disengagement related to reprehensible conduct

The first disengagement mechanism relating to reprehensible conduct (i.e. emitting greenhouse gases to attain luxuries) is *social and moral justification*: harmful conduct is made acceptable by portraying it as being in the service of socially worthy or morally valued purposes (Bandura 1991, 73). Belief in the worthiness of an enterprise eliminates the self-condemnation that might otherwise be evoked by its harmful aspects, thereby enabling people to preserve the positive image of themselves as moral agents even when inflicting harm on others (Bandura 2002, 103).

From the perspective of individual emitters, it is said, climate change is only an unwelcome by-product of their daily, apparently innocent activities, but is not part of their purposes (Gardiner 2011b, 45). Sinnott-Armstrong (2005, 288), for example, examines driving for fun in a sport utility vehicle on a beautiful Sunday afternoon, and renders it socially acceptable by portraying it as serving the socially worthy purpose of recreation: ‘maybe you do not like to go for drives in sport utility vehicles on sunny Sunday afternoons, but many people do’. Nonetheless, from a moral perspective, appeal to the goal of recreation clearly fails to exonerate emitters from moral responsibility for the contribution of such greenhouse gas emitting activities to the harmful effects on climate change.

Second, since the perception of behaviour is coloured by what it is compared to, *advantageous comparison* is another powerful strategy to disengage moral self-control (Bandura 1999, 195-196; 2002, 175). By exploiting this contrast principle, reprehensible conduct can be made to appear righteous. Let us return to Sinnott-Armstrong’s analysis of recreational driving. One of his major arguments is that people should not be held responsible for harms ‘by calling their acts causes of harms when their acts are *not at all unusual*, assuming that they did not intend the harm’ (Sinnott-Armstrong 2005, 290, emphasis added). Since outings in a fuel-intensive car are not unusual, he concludes that these should not be seen as a cause of global warming or its harms. This should be understood as a pragmatic heuristic: if agents who are doing no worse than average are condemned, then the worst offenders would have no incentive to improve their acts, because even should they reduce their activities to average levels, they could still expect to remain subject to blame (Ibid.). Therefore, he argues, condemnation should be reserved for the worst offenders.

This argumentation clearly corresponds to an *advantageous comparison* since it encourages the search for and comparison with the worst emitters, in order to attempt to exculpate one’s own greenhouse gas emitting acts. Even if we ignore the fact that it is an instance of the *ad populum* fallacy, Sinnott-Armstrong’s heuristic would still be

incapable of exonerating individual emitters from their responsibility, since it might be questioned whether their greenhouse gas emitting acts are in fact *not at all unusual*. Worldwide data about outings in a fuel-intensive car are lacking, but consider for example meat consumption: in 2011, an average of 77 and 118 kilograms of meat was consumed per capita in Belgium, respectively the US, while the world average was merely 42 kilograms (FAO 2015). Although eating large quantities of meat does not appear to be unusual in the Belgian or US context, it is in a global context. Since climate change is a global problem, greenhouse gas emitting acts should be scrutinized with reference to the global context, rather than to a specific geographical or economic background. Belgian meat consumers should effectively be held responsible according to Sinnott-Armstrong's own heuristic – contrary to his argument – because they are among the worst offenders in the global context.

A third strategy of moral disengagement relating to the reprehensible conduct is *euphemistic labelling*. Since language shapes the perceptions and thought processes relating to actions, euphemistic labelling is a convenient and widely used device to mask harmful conduct and to reduce or eliminate personal responsibility for it (Bandura 1991, 79; 1999, 195). For example, Bandura (2007, 19) argues that the term *global warming* conveys 'the image of a mildly pleasant condition'. In contrast, however, Republican strategist Frank Luntz (2002, 142) advised the G.W. Bush administration precisely the contrary: 'while *global warming* has catastrophic connotations attached to it, *climate change* suggests a more controllable and less emotional challenge'.

We do not deny that part of the challenge climate change poses to our moral judgment system is indeed that greenhouse gases are emitted by seemingly usual, everyday activities that may serve socially worthy purposes. However, the arguments discussed above merely provide *rationalizations* of such greenhouse gas emitting activities, rather than convincingly exonerating emitters from moral responsibility. We will return to this in the fourth section.

5.3.2 Mechanisms of moral disengagement related to injurious effects

Climate change and its effects are frequently subject to outright *denial*, for example by the oil industry and conservative think tanks (Oreskes & Conway 2010, chapter 6). More subtle strategies of moral disengagement with respect to the consequences of one's actions are deployed as well. *Minimizing consequences*, for example, is often used regarding climate change: a warmer climate is seen as making life more pleasant for people living in the north. However, expected beneficial effects of climate change (such as an initial increase in agricultural productivity in northern Europe – EEA 2015, 34) are greatly outweighed by negative impacts in both northern and southern countries.

If minimization does not work, *the evidence of harm can be discredited* in a number of ways (Bandura 1999, 199). Consider for example the persistent ‘climate myth’ that global warming is caused by changes in the radiation output of the sun or in the Earth’s orbit, rather than by anthropogenic greenhouse gas emissions. In fact, knowledge about human influence on the climate system at least dates back to Svante Arrhenius’ 1896 findings regarding the influence of atmospheric carbon dioxide on the global temperature, and each *Assessment Report* of the IPCC confirms anthropogenic greenhouse gases as the dominant cause of global warming. The IPCC’s *Fifth Assessment Report* even states that ‘the best estimate of the human-induced contribution to warming is similar to the observed warming over this period’, rendering the effect of natural factors insignificant (IPCC 2013, 17). Other attempts of sceptics to distort or obscure scientific findings have been similarly debunked in a way accessible to lay audiences (see, for example, Beck s.d.).

The scientific consensus about climate change is becoming increasingly confident, and remaining uncertainties are increasingly revisited as *risks* through estimations in terms of probabilities (Bell 2011, 110; IPCC 2013, chapters 11 and 12). In fact, it can be argued that there is a disproportional focus on scientific uncertainty in climate change, while much of it is manufactured or grossly exaggerated in order to create the false impression that some questions remain unsettled or that some conclusions are much less widely accepted by scientists than they actually are (Vanderheiden 2008, 197). In addition to clearly being unrealistic, demanding *full* scientific certainty merely serves as a convenient justification for inaction (Bandura 2007, 21) – even though in the face of the possibly catastrophic impacts of climate change, inaction is clearly a dangerous way of dealing with any remaining uncertainty.

In sum, although scientific uncertainties remain and clearly complicate matters, they do not impede a general, robust moral judgment about the threats climate change poses to the enjoyment of human rights and the actions needed to tackle it. Rather, the strategies of *denial*, *minimizing consequences* and *discrediting evidence of harm* are used to evade moral responsibility for the contribution of emissions resulting from a profligate lifestyle to climate change.

5.3.3 Mechanisms of moral disengagement operating at the intersection between reprehensible conduct and injurious effects

Diffusion and *displacement of responsibility* for culpable behaviour are two potent dissociative practices that operate by obscuring the relationship between actions and the effects they cause, minimizing an individual’s agentic role (Bandura 1991, 81; 2002, 106).

First, the exercise of moral self-control can be weakened when personal agency is obscured by *diffusing responsibility* for reprehensible conduct (Bandura 1999, 198; 2002, 107). A frequently deployed form in the climate case involves reference to *collective action*, which makes an individual's contribution to an aggregate harmful effect seem trivial. Any harm done by a group of people can always largely be ascribed to the behaviour of the others in the group (Bandura 1991, 85; 1999, 198).

Adverse climate-related impacts result from the sum of individual greenhouse gas emissions that each provide exceedingly small contributions to the overall large aggregate effects of climate change (Schwenkenbecher 2014, 172; Vanderheiden 2008, 163). Consequently, it has been argued that individual greenhouse gas emissions are entirely faultless, since, taken separately, their effects are insignificant (Sinnott-Armstrong 2005, 289). However, this view commits a mistake in moral mathematics, involving the belief that *imperceptible effects* cannot be morally significant.⁹ On this view, an act cannot be right or wrong because of its effects on other people if these effects are imperceptible (Parfit 1987, 77). In contrast, Parfit (1987, 83) argues that each of our acts may be very wrong, even if their effects are imperceptible, since our acts may *together* make these people very much worse off. Kagan (2011, 132-133) even denies the possibility of imperceptible effects to exist, since there will always be at least one perceptible difference, however small it may be. The infinitesimal contribution of a single greenhouse gas emission might be so tiny as to be imperceptible, but *it is not zero* (Vanderheiden 2008, 162). In addition, the global temperature has risen by 0.85°C since 1880, which already led to significant climatic changes adversely impacting human life, and current levels of greenhouse gas emissions make further detrimental climatic changes increasingly likely (IPCC 2013, 194; 2014b, 124-125). In this light, it is safer to assume that individual greenhouse gas emissions have an *exceedingly small but fully real effect* (in that they increase the risk that vulnerable people suffer from climate change harms), rather than considering them to be morally insignificant (see also McKinnon 2012, 103).

Second, *displacement of responsibility* for climate change occurs both with respect to reprehensible *conduct* and injurious *effects*. Regarding the latter, blaming some or all of global warming on natural cyclic climate changes, rather than on human activities, absolves those with consumptive lifestyles of responsibility for the rising temperatures

⁹ Another so-called mistake in moral mathematics is *ignoring the effects of sets of acts*: 'even if an act harms no one, this act may be wrong because it is one of a *set* of acts that *together* harm other people' (Parfit 1987, 70, emphasis in original). Against this argument, Jamieson (2014, 172) objects that in the climate change case, for virtually every emitter *x* there is a smaller group which does not include *x* such that it is true that if that group were to act differently then climate change would not occur, since climate change will occur whether or not *x* engages in greenhouse gas emitting activities. We do not have the space here to explore this discussion into more detail, but we will rather focus on the mistake of *ignoring imperceptible effects*, which is not considered by Jamieson.

(Bandura 2007, 19-20). However, as argued in section 5.3.2 above, the contribution of natural causes to climate change is insignificant, and scientific knowledge about human influence on the climate system is well-established.

Displacement of responsibility with respect to one's *conduct* entails that people are spared from self-condemnation if they are not (or do not perceive themselves to be) the *actual* agents of their actions (Bandura 1991, 81; 2002, 106). In the climate case, it has indeed been argued that agents are involved in complex social systems, where their choices are co- or pre-determined by the choices of others and choices of the past, which present them with certain kinds of infrastructure and cultural expectations regarding, for example, energy use (Gardiner 2011b, 46).

To assess this claim, we should return to our discussion of individual agency in section 5.2. In the current context of a fossil-fuel intensive economy, it cannot be denied that essentially all individuals are currently *compelled* to emit some level of greenhouse gases to fulfil their basic rights. To that extent, individual emitters cannot be identified as being morally responsible (Shue 2011, 309; Vanderheiden 2008, 72). However, even though contextual factors influence the range of an individual's actions, the compulsion claim is unconvincing with respect to emissions resulting from their profligate consumption (such as wasteful energy consumption and the overconsumption of meat), because these are not essential for meeting one's basic rights. These emissions are subject to choice of and control by individuals, so they can be held responsible for them (Caney 2009, 176; Vanderheiden 2008, 178).

Citizens – rightfully – expect guidance of their national governments regarding greenhouse gas emissions reductions, and those governments as well as international institutions can be held responsible for their lack of ambition. Nonetheless, such a wait-and-see attitude of citizens is another instance of moral disengagement through *displacing responsibility*: even in the absence of effective (trans)national policies to tackle climate change, emitters retain moral responsibility for the effects of the emissions that are a result of their profligate lifestyle.¹⁰ In addition, Klein considers 'the idea that change is something that is handed down from above by our betters, rather than something we demand ourselves' to be one of the greatest psychological barriers to climate action (Klein 2014, 212).

¹⁰ Moreover, if an individual emitter wants to invoke the argument that it is the task of the government and supranational institutions to address climate change, he or she at the very least has the obligation to vote for parties that represent the most likely chance of success (Maltais 2013, 602). We will discuss this issue in more detail in chapter 6.

Clearly, climate change is a collective action problem, requiring structural responses by national governments and international institutions. However, this observation fails to convincingly exonerate individual emitters from moral responsibility for the harmful effects of the emissions resulting from their profligate energy and meat consumption.

5.3.4 Mechanisms of moral disengagement related to victims

An especially egregious strategy of moral disengagement is *dehumanization*. The strength of moral self-control depends on how wrongdoers regard the people they mistreat: through perceived similarity, the joys and suffering of those with whom one identifies are more vicariously arousing than those of strangers, out-group members or those divested of human qualities (Bandura 1991, 87-88; 2002, 108-109; Markowitz and Shariff 2012, 245). Hence, while it is difficult to inflict suffering on humanized persons without risking self-condemnation, strangers can be more easily depersonalized or dehumanized, thereby disengaging self-condemnation that would inhibit harmful conduct.

Markowitz and Shariff (2012, 244-245) argue that because of the spatial and temporal remoteness between the causes and effects of climate change, its victims are likely to be seen as less similar to oneself or as out-group members, and therefore as less deserving of moral standing. Such perceived remoteness indeed fosters the estrangement conducive to dehumanization: ‘it is easier to harm others when their suffering is not visible and when destructive actions are physically and temporally remote from their injurious effects’ (Bandura 2002, 108).

In the following section, we will criticize the emphasis on the spatial and temporal remoteness of climate change’s effects more thoroughly, but here we should already like to mention that it obscures a much more morally salient fact, namely that climate change exacerbates the existing inequities between the global consumption elites and the global poor. We would call this the *stratified remoteness* between the sources and the impacts of climate change: whereas the rich have caused most of the problem, poor and marginalized people suffer more from climate-related harms – wherever and whenever they live – since they are more vulnerable to the effects of climate change and have less adaptive capacity (IPCC 2014a, 1066-1069; UNDP 2007, chapter 2). Unfortunately, since emitters with a profligate lifestyle identify themselves with other members of their elite rather than with their poor contemporaries (Jamieson 2010, 434), *stratified remoteness* also implies the kind of estrangement that fosters dehumanization.

With respect to climate change, this strategy of moral disengagement is *de facto* at work in proposals for a positive social discount rate, which divests future people of their human qualities by ascribing less value to their rights or interests, the further they are into the

future (Caney 2009, 164-165). However, since neither location in space or time, nor membership of a socioeconomic class is a morally relevant feature, it is inappropriate to discriminate against persons on these bases (Caney 2009, 168-169).

5.4 Moral disengagement and the motivational gap

Our brief discussion in the previous section indicates that strategies of moral disengagement are abundantly used with respect to climate change. How does this observation contribute to explaining the inadequacy of current responses to climate change?

The predominant explanation in the climate ethics literature maintains that our moral judgment system is not well equipped to identify climate change as an important moral imperative or morally intense issue (Jamieson 2006, 476-477; 2010, 436-437; Markowitz and Shariff 2012, 243). People do not tend to conceptualize climate change as an urgent moral problem because it is not accompanied by the characteristics of a paradigm moral problem: ‘climate change is not a matter of a clearly identifiable individual acting intentionally so as to inflict an identifiable harm on another identifiable individual, closely related in time and space’ (Jamieson 2010, 436-437). Jamieson (2010, 438; 2014, 168-169) therefore concludes that viewing climate change as a problem of individual moral responsibility requires a revision of our everyday understandings of moral responsibility.

Indeed, due to its inherent complexity – including the perceived social acceptability of greenhouse gas emitting activities, the remaining scientific uncertainties, and the collective action involved – the challenge climate change poses to our moral judgment system is undeniable. Nonetheless, these arguments should also be subjected to thorough critical scrutiny, since people have the ability to psychologically reconstruct a problem in order to reduce its moral intensity or urgency, on which the application of ethical standards importantly depends (Barsky 2011, 61).

Consider for example an often-invoked argument to explain why climate change does not provoke strong moral intuitions, namely the spatial and temporal *remoteness* of the effects of one’s greenhouse gas emitting activities. The causes and effects of climate change are indeed *dispersed* in space and time, in the sense that greenhouse gases emitted from any geographical location affect the climate globally and into the future (Gardiner 2006; Jamieson 2014, 102). Indeed, this is likely to reduce the moral intensity of climate change. Nonetheless, the emphasis in the literature on (and the general perception in the wider audience of) the *remoteness* of climate-related effects is deceitful, since concerns

about vulnerability do not only apply to people who live distant in space or time (Gardiner 2011b, 45; Jamieson 2010, 439). Although future people will likely suffer most, climate change's harmful impacts are *already* massively affecting human life today (Watts et al. 2015, 1). The IPCC states that 'on all continents and across major ocean regions, significant impacts *have now been observed*' (IPCC 2014a, 1010, emphasis added). For example, in 2004, climate change was already responsible for 3% of diarrhoea, 3% of malaria and 3.8% of dengue fever deaths worldwide; and the total mortality attributable to climate change was about 141,000 deaths, of which 85% were child deaths (WHO 2009, 24, 50). Moreover, climate change not only affects people living in distant places, but also Western Europe and the US (EEA 2015, 9-10; Melillo et al. 2014). For example, the amount of precipitation falling in very heavy events from 1958 to 2012 has markedly increased in the US, *inter alia* by 71 per cent in the Northeast (Melillo et al. 2014, 37).

Hence, although the *dispersion* of causes and effects of climate change contributes to its complexity, emphasis on the spatial and temporal *remoteness* of its harmful effects is a deceitful characterization of climate change. Invoking it to condone inaction does not provide a valid justification, yet rather amounts to moral disengagement. Whereas the complexity of moral problems has usually been studied as impeding the formation of a robust moral judgment, the extent to which the factors contributing to this complexity correspond to or facilitate mechanisms of moral disengagement should be acknowledged as well (Bandura 1991, 81-82).¹¹ In fact, the inherent complexity of climate change precisely provides the necessary latitude for emitters to reconstruct the problem of climate change and the contribution of their profligate consumption to it (Gardiner 2006, 408; 2011a, 46).

The role of moral disengagement is to reduce dissonance or inconsistency between personal or societal moral standards and the pursuit of self-interested desires that would conflict with these standards (Bandura 2002, 102; Bersoff 1999, 28; Stoll-Kleemann et al. 2001, 111). According to Stoll-Kleemann et al. (2001, 112), the most important internal inconsistency with respect to climate change lies in the disjunction between the need to mitigate climate change and the personal preference for particular lifestyles or consumption habits: people might feel anxiety over climate change, but resent the changes in behaviour that are required to effectively mitigate climate change (such as using public transportation or reducing energy and meat consumption). The opportunity costs involved in shifting away from profligate lifestyles are perceived as daunting (Stoll-

¹¹ Gardiner (2011a, chapter 9) calls this the problem of *moral corruption*, which he illustrates by drawing parallels with the biased reasoning of the Dashwoods in Jane Austen's *Sense and Sensibility*. Our analysis in the previous section clearly confirms Gardiner's diagnosis, and we believe that the moral psychological literature on moral agency and moral disengagement provides an analytical framework for his intuitive parallels.

Kleemann et al. 2001, 107; Klein 2014, 212). Moral disengagement thus allows emitters to maintain a consumptive lifestyle and to emit greenhouse gases, without having to accept moral responsibility for the resulting climate-related harms.

5.5 Tackling moral disengagement

According Jamieson (2006, 476), what we need to address climate change is ‘a sense of ownership and identification with the outcomes that our actions produce. It is this sense of ownership and identification that allows us to overcome the alienation from the collective consequences of our actions’.¹² The abundant and pervasive deployment of moral disengagement forms a formidable obstacle to successfully responding to climate change, because it is precisely such biased reasoning that enables the alienation from the consequences of one’s conduct. The question therefore remains as to how moral disengagement can be addressed.

Three avenues for tackling moral disengagement arise from our analysis in the previous section. First, we can attempt to increase the moral urgency of climate change by enhancing people’s moral judgment of their contribution to the problem. Gardiner (2013, 132) argues that the lack of robust moral concepts to completely capture climate change does not imply that ‘we lack the ability to make any ethical judgements at all’. Even though our available moral concepts of harm and moral responsibility may ultimately be inadequate to fully capture the complexity of climate change, they nonetheless allow us to judge that it forms a strong moral imperative for action; the threat climate change poses and what (initially) should be done to tackle it are sufficiently clear. Defending a partial moral judgment (for example, by focusing on already observed climatic changes and on the fully real – albeit imperceptible – harmful effects of one’s individual emissions) reduces the opportunity for deploying strategies of moral disengagement, since ‘the less moral ambiguity there is surrounding a situation, the less latitude an agent has in negotiating reality in such a way as to provide justification for an unethical action’ (Bersoff 1999, 37). Communicators should incessantly continue to explain to individuals that they really do have agency in climate change, and create awareness about the behavioural changes individuals can undertake or the availability of

¹² Jamieson (2006, 480-481; 2014, 185-193) argues that this requires nourishing and cultivating certain *green virtues*, including *humility*, *temperance*, *mindfulness*, *cooperativeness*, and *respect for nature*. We agree that virtue ethics might play an important role in tackling climate change, and Jamieson’s account provides a well-developed overview of the most important virtues involved.

alternatives for greenhouse gas emitting activities (for example, related to energy and meat consumption).

A second strategy is to encourage people to evaluate and reconsider their self-interested motives that conflict with morality – in the case of climate change, the accumulation of wealth and the pursuit of a profligate lifestyle. Moreover, we could draw more attention to the intrinsic satisfaction provided by pro-environmental and pro-social behaviour, to the negative consequences of materialistic pursuits on physical and psychological well-being for individual agents themselves (including noise, pollution, stress, congestion and consumer anxiety), and to the non-material sources of life satisfaction (such as more time for leisure, personal contacts, political participation and social well-being) (Peeters et al. 2013; Brown & Kasser 2005, 350; De Young 2000, 515-516; Soper, 2007, 211, 221; 2008, 567-587). People who adjust their values and self-interested motives in this light may consume less wastefully, emit less greenhouse gases, and would not experience the need for resorting to moral disengagement in order to avoid moral responsibility for climate-related harms.

These two initial strategies will already reduce the *opportunity* for moral disengagement and the *need* therefor. In addition, we submit that the *propensity* for moral disengagement itself should be tackled as well. However, in contrast to the vast body of research providing conceptual analysis and empirical evidence of moral disengagement, relatively little attention has been devoted to *addressing* the propensity to disengage moral self-sanctions from harmful conduct. We can thus only make some tentative suggestions.

Most importantly, biased reasoning will facilitate a consumptive lifestyle (without having to accept moral responsibility for its consequences) only to the extent that the emitter believes that her reasoning is valid (Bersoff 1999, 37). This implies that increasing public knowledge about the facts regarding climate change, debunking false beliefs and invalidating biased reasoning can potentially reduce moral disengagement. For example, as we discussed in section 5.3.1 above, it has been argued that individual emitters should not be held responsible for the effects of their greenhouse gas activities, because these are presumed to be *not at all unusual*. Demonstrating that this reasoning is invalid could prevent appeal to it. Nonetheless, this should be done in a well-founded and respectful way, rather than by inducing feelings of guilt, which might backfire by provoking even further alienation through moral disengagement.

In contrast, action on climate change should be linked to positive moral emotions, which might decrease defensive reaction and allow individuals to recognize tackling climate change in a rewarding rather than discouraging manner – for example by increasing feelings of competence and pride about rising to the challenge of reducing

one's contribution to climate change (De Young 2000, 521-522; Markowitz & Shariff 2012, 245; Williams & DeSteno 2008, 1007-1017). We should aim at increasing people's perceived self-efficacy, since a strong sense of self-efficacy not only promotes pro-social and pro-environmental behaviour, but also curtails the propensity to disengage moral self-sanctions from harmful conduct (Bandura 1995; Bandura et al. 2001, 125; De Young 2000, 521-522).

Moreover, according to Gardiner (2011a, 301), 'serious moral agents strive to protect themselves against rationalization, self-deception, and moral manipulation'. We would therefore submit that a better general understanding of moral psychology and the function of moral disengagement might render people less inclined to deploy such biased reasoning. People might be more self-critical and less prone to deploying moral disengagement if they are aware that it is a kind of (self-)deception. Moreover, for people who generally see themselves as moral and honest, moral disengagement might lose much of its attractiveness when contrasted with moral integrity – that is, reducing inconsistency between conduct and moral standards by changing one's behaviour rather than the perception thereof.

5.6 Concluding remarks

Although the observed and expected impacts of climate change pose a significant threat to some key human rights of current as well as future people, current responses to it are manifestly inadequate. An important explanation for this refers to the inability of our moral framework to fully capture climate change. Although, due to its inherent complexity, climate change indeed poses a significant challenge to our moral judgment system, this explanation disregards people's ability to psychologically reconstruct a problem in order to reduce its urgency or minimize perceptions of their own contribution to it. In fact, the complexity of climate change precisely provides the necessary latitude for emitters to deploy moral disengagement, which enables them to dissociate self-condemnation from harmful conduct.

In our view, an important challenge for climate ethics is to identify to which extent our conventional moral framework is indeed inadequate to capture complex moral problems such as climate change; and to which extent such arguments in fact correspond to or facilitate biased reasoning. As we have illustrated, virtually all of the mechanisms of moral disengagement are deployed in climate change: social and moral justification; advantageous comparison; euphemistic labelling; denial of consequences; minimizing

consequences; discrediting evidence of harm; diffusion of responsibility; displacement of responsibility; and dehumanization. These strategies allow emitters to pursue a consumptive lifestyle without having to accept moral responsibility for the harmful consequences of the emissions from their profligate consumption.

We have tentatively suggested some strategies for tackling moral disengagement. In addition to enhancing people's moral judgment of their contribution to climate change and encouraging them to reconsider their materialistic pursuits, the propensity for moral disengagement itself should be tackled. Although more research in this respect is needed, moral disengagement might be reduced through deconstructing biased reasoning in a well-founded and respectful way, linking action on climate change to positive moral emotions, and promoting a better general understanding of moral psychology and the function of moral disengagement.

In this chapter we have discussed how strategies of moral disengagement can significantly contribute to the lack of motivation of individuals to tackle climate change. In the next chapter we will elaborate on two specific strategies of moral disengagement, namely the diffusion and displacement of responsibility. More specifically, we will examine how these mechanisms might contribute to feasibility problems at the institutional level.

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Chapter 6 The delegated authority model misused as a strategy of disengagement in the case of climate change¹

6.1 Introduction

Climate change represents one of the most serious and far-reaching challenges facing humankind in the twenty-first century. Nevertheless, the response to it is characterized by inaction at all levels. Despite overwhelming evidence to the contrary, the harmful effects of climate change are outrightly *denied* or blamed on natural processes, scientific uncertainties are overly emphasized, and evidence is discredited. Many claim either ignorance or that *it is not their fault* (Sinnott-Armstrong 2005). Regarding their engagement in greenhouse gas emitting activities, emitters maintain that *it makes no difference whether they do it or don't* and that *any way, everybody does it* (Gabor 1994).² They also claim not to have any alternative because their economy is completely dependent on fossil fuels, or because the social and cultural context in which they are embedded imposes values and expectations that inescapably influence their choices and actions. Finally, many people believe that addressing climate change is exclusively the job of *others* – primarily the government and supranational institutions.

In this chapter we will focus on this last argument, and evaluate to what extent it is legitimate. More specifically, we will assess the explanation for the ubiquitous inaction that refers to the delegated authority model (Gardiner 2011a). Although it remains largely implicit in political theory, this model underpins the legitimacy of political institutions

¹ This chapter is based on the following article: De Smet, Andries, Wouter Peeters, and Sigrid Sterckx. (2016) "The delegated authority model misused as a strategy of disengagement in the case of climate change." *Ethics and Global Politics*, 9.

² In his book, Gabor explores justifications and excuses ordinary people provide for their transgressions.

and their leaders, depending on their ability to solve problems that are difficult to address at the individual level. Since the institutions created to abate the significant threat climate change poses to basic human rights fail to do so, their legitimacy is seriously questionable. The only way they might still claim to be legitimate is by appealing to considerations of feasibility. If the implemented policy turns out to be the best one available under the current circumstances, the institutions would arguably be no longer blameworthy for the failure to provide a robust response to climate change. The question thus arises: how should we evaluate the options open to the United Nations Framework Convention on Climate Change (UNFCCC), the states that constitute this institution (the Parties to the UNFCCC), and the citizens of these states?

More specifically, we will examine whether the failure to design a policy that respects basic human rights is due to unwillingness on the part of the political representatives or due to genuine unfeasibility. In answering this question, we will pay special attention to the input-side of the delegated authority model, referring to individuals who delegate their responsibilities to a collective level when those responsibilities are difficult to discharge at the individual level. However, we will argue that delegating responsibility to a collective level can only exonerate the individual if it is done in a consistent way; otherwise it is nothing more than blame-shifting or displacing responsibility. Hiding behind the delegated authority model should then be characterized as a mechanism of moral disengagement (see Bandura 1999, 193-209; Bandura et al. 1996, 364; Tsang 2002, 25)³ through which people deny their individual responsibility in an unjustifiable way. We will attempt to settle this matter and explore how this affects our responsibility for tackling climate change.

6.2 Human rights threatened by climate change

Recent literature has drawn attention to the impact of climate change on human rights.⁴ An important contribution has been provided by Simon Caney, who defines human rights as ‘minimum moral thresholds to which all individuals are entitled, simply by virtue of

³ For a comprehensive overview of the deployment of other strategies of moral disengagement in climate change, see Peeters et al. (2015). For a more concise overview, see chapter 5.

⁴ A human rights approach to climate change faces some theoretical challenges. See, for example, Stephen Gardiner (2013). Nonetheless, without assuming that the human rights approach can provide a comprehensive account of climate change, we agree with Caney (2010, 83) that the minimalist normative position on the basis of some fundamental rights can enjoy ecumenical support from a variety of different ethical perspectives.

their humanity, and which override all other moral values' (Caney 2010, 73). He focuses on three key rights: the right to life; the right to health; and the right to subsistence. Employing a modest and minimal conception of human rights, Caney (2009; 2010) demonstrates that anthropogenic climate change violates these rights.

In 2008, expressing concern about the threat climate change poses to the enjoyment of human rights, the United Nations Human Rights Council (HRC) adopted *Resolution 7/23 on Human rights and climate change*, requesting the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a study on the relationship between climate change and human rights (UNHRC 2008; OHCHR 2014). The report submitted by the OHCHR (2009) was presented and discussed at the tenth session of the UN Human Rights Council on 15 January 2009. Subsequently, the HRC (2009) adopted *Resolution 10/4 on Human Rights and Climate Change*, noting that:

Climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights, including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation.⁵

The OHCHR report describes the influence of climate change on several human rights codified in the *International Bill of Human Rights* – consisting of the *Universal Declaration of Human Rights* (1948), the *International Covenant on Civil and Political Rights* (1966a), and the *International Covenant on Economic, Social and Cultural Rights* (1966b) – as well as other relevant UN treaties and conventions. Arguably, the OHCHR report interprets the human rights at issue in a broader way than Caney's minimal conception. To strengthen our argument, we will adopt his minimalist normative position. We will justify our position in the fourth section; here we will start by elaborating Caney's account.

First, Caney (2009, 230-31; 2010, 76-78) mentions the *right to life*. The *International Covenant on Civil and Political Rights* (1966a, article 6.1) states that 'every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life'. Caney employs a minimal conception of this right as a merely *negative right*, not making the more contentious claim that persons have a *positive right* to have their life protected against all kinds of threats. Even using this minimal conception, a number of the observed and projected impacts of climate change will pose a substantial

⁵ While resolutions and reports of the HRC are important policy guidance documents, they do not establish binding treaty interpretations or obligations. On the role and functioning of the HRC, see Olivier De Schutter (2010, 855-896).

threat to the *right to life*. Climate change will result in an increase of the frequency and intensity of extreme weather events such as storms, heat waves, and floods. Since these disasters already have devastating effects on mortality, their increased frequency and intensity will jeopardize many people's enjoyment of the right to life, particularly in the developing world.⁶ Climate change poses a significant threat to human security in general, but of specific relevance here is the observation that some of the factors that increase the risk of violent conflict are sensitive to climate change, and also to policy responses (IPCC 2014, 771-775).

Second, climate change will have a detrimental impact on the effective enjoyment of the *right to health*. The *International Covenant on Economic, Social and Cultural Rights* (1966b, article 12) recognizes 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.⁷ The full realization of such a right requires *inter alia* provisions for the reduction of infant mortality, the improvement of environmental and industrial hygiene, the prevention and treatment of diseases, and the assurance of medical service and attention in the event of sickness. The wording in the report of the OHCHR indeed implies a broad interpretation of the right to health. In contrast, Caney's minimal account affirms only a negative right 'that other people do not act so as to create serious threats to their health', since he considers the conception of the right to health as mentioned in the *International Covenant on Economic, Social and Cultural Rights* (aspiring the highest attainable standard of physical and mental health) as maximalist and therefore open to objections by critics (OHCHR 2009, paragraph 31; Caney 2010, 78).

Nonetheless, both accounts agree that human-induced climate change clearly results in a variety of different threats to the *right to health*, affecting millions of people, especially those with a low adaptive capacity (OHCHR 2009, paragraphs 32-34; Caney 2010, 78-80). The IPCC distinguishes three basic pathways by which climate change affects health (IPCC 2014, 716-717). First, the increases in the frequency of extreme weather will not only raise mortality (as mentioned above), but also directly impact human health in general. Second, there are effects mediated through natural systems. Temperature, precipitation and humidity have a strong influence on the spread and transmission of vector-borne diseases (such as malaria and dengue fever), water- and food-borne diseases (such as cholera and other diarrhoeal diseases), and allergic diseases (IPCC 2014, 722-730; Costello et al. 2009, 1702-1708; McMichael & Lindgren 2011, 407-408). The health impacts of climate change encompass shifts in the patterns, spread and transmission of these

⁶ See Costello et al. (2009, 1702-1708); McMichael and Lindgren (2011, 406-7); IPCC (2014, 720-722).

⁷ The right to health is also indirectly implicated by *The Universal Declaration of Human Rights*: 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family' (UN 1948, article 25.1).

diseases. Finally, some health impacts that are heavily mediated through human institutions include nutrition and water insecurity, occupational health concerns (such as heat strain and heat stroke), mental health problems (in terms of increasing stress as a result of harsher weather conditions), and compounded health risks as a consequence of increased human movement, social disruptions and conflict (resulting *inter alia* in the spread of infectious diseases and malnutrition) (McMichael & Lindgren 2011, 409-410; IPCC 2014, 730-733, 766-770, 771-775).

The third human right under consideration is the *right to subsistence*. According to Caney's minimal conception, 'all persons have a human right that other people do not act so as to deprive them of the means of subsistence' (Caney 2009, 232; 2010, 80-82). Climate change will compound existing food insecurity, particularly threatening smallholder and subsistence farmers (Costello et al. 2009, 1704-1705; McMichael & Lindgren 2011, 408; UNDP 2007, 27). Although impacts will occur unevenly, overall, higher temperatures and changes in precipitation will reduce both the quantity and quality of global food yields, result in shifts of fish populations, affect livestock, and possibly lead to food-price shocks. The IPCC concludes with *high confidence* that "climate change will have a substantial negative impact on (i) per capita calorie availability, (ii) childhood undernutrition, particularly stunting and (iii) on undernutrition-related child deaths and DALYs [disability-adjusted life years] in developing countries" (IPCC 2014, 731). Moreover, climate change will exacerbate water insecurity in many regions, an insecurity which already impairs hygiene, reduces farm yields, increases infectious diseases, and can become a source of conflict. Not only changing temperatures and precipitation patterns, but also changing run-off patterns, glacial shrinkage and increasing floods and droughts will substantially compromise flows of water for irrigation and human consumption.

In addition to these three fundamental rights, climate change will also impact the effective enjoyment of other human rights.⁸ Nonetheless, we will base our argumentation on the minimalist list of key rights threatened by climate change, namely the right to life, the right to health, and the right to subsistence, understood as negative rights.

⁸ For a discussion of these additional rights, see Peeters et al. (2015).

6.3 The delegated authority model

The characterization of anthropogenic climate change as a violation of the basic human rights to life, subsistence, and health is gaining wide recognition. This is reflected in the adoption of *Resolution 10/4 on Human Rights and Climate Change* by the HRC in 2009. The seriousness of this characterization should heighten the urgency of tackling climate change. However, as this task appears to be overwhelming for individuals to perform, people tend to look at the institutional level for solutions. This idea is at the core of the *delegated authority model*, which underpins the legitimacy of political institutions and their leaders, depending on their ability to solve problems that are difficult to address at the individual level. It has remained largely implicit in political theory, but Stephen Gardiner (2011a, 53) makes the model explicit:

According to a long tradition in political theory, political institutions and their leaders are said to be legitimate because, and to the extent that, citizens delegate their own responsibilities and powers to them. The basic idea is that political authorities act in the name of the citizens in order to solve problems that either cannot be addressed, or else would be poorly handled at the individual level, and that this is what, most fundamentally, justifies both their existence and their specific form.

In the case of climate change, the delegation of responsibilities has failed to be successful. According to Gardiner (2011a, 53-54), responsibility for this failure most directly falls on recent political leaders and current institutions, especially since they have assumed the mantle of responsibility and have acted as if they were capable of discharging this role (for example, by making speeches, promising progress, and organizing frequent meetings under the UNFCCC). Hence, since they have failed to discharge the responsibilities delegated to them, they can legitimately be morally criticized for this failure.

In the next section we will examine whether this issue really is as straightforward as it is often depicted. More specifically, we will question whether the failure to implement a robust policy to tackle climate change necessarily implies that the relevant institution loses its legitimacy.

6.4 The legitimacy of the United Nations Framework Convention on Climate Change (UNFCCC)

Allen Buchanan and Robert Keohane point out that consent of democratic states is in itself not sufficient to make a global institution legitimate. Moreover, given the diversity of moral standpoints, an institution can be legitimate without being fully just. They propose three ‘substantive criteria’ that institutions should meet in order to be legitimate: minimal moral acceptability, comparative benefit and institutional integrity (Buchanan & Keohane 2006, 419). We will explain these criteria and assess to what extent the UNFCCC can be said to meet them, although this is not a straightforward exercise.

The *first criterion* Buchanan and Keohane propose is ‘minimal moral acceptability’. To be worthy of our support, an institution must not persist in committing serious injustices.⁹ Although the UNFCCC is not committing these injustices directly, it nonetheless fails to prevent the violation of the basic human rights at issue. Therefore, the legitimacy of the UNFCCC can already be challenged on the basis of this first criterion. Thanks to ethicists such as Simon Caney and Derek Bell (2011), as well as the report of the Office of the United Nations High Commissioner for Human Rights cited in the second section above, the characterization of climate change as a violation of basic human rights is gaining wide recognition. Moreover, at the Conference of Parties in Cancun in 2010, it was acknowledged that climate change is a major threat to human rights that needs to be urgently addressed by all parties (UNFCCC 2010, Preamble). However, this has not resulted in a strong and binding policy to avoid such massive violations of human rights by mitigation and/or adaptation. As we have discussed in the second section, climate change already jeopardizes the human rights to life, health, and subsistence, and this situation is likely to exacerbate. Thus, even if we only take the normatively minimalist position that a limited list of basic human rights should at least be respected, the current global governance institution performs poorly. By violating the duty to respect basic human rights, the UNFCCC and its member states do not meet the criterion of minimal moral acceptability, implying that its legitimacy has been dealt a sharp blow.

⁹ Since reasonable disagreement seems to exist about what exactly justice entails, we adopt a minimalist normative position, namely respect for the fundamental human rights to life, to subsistence, and to health, as discussed in the second section above (and in chapter 2). We agree with Buchanan and Keohane that this is a minimal requirement for legitimacy, but postulating more demanding moral requirements of justice in terms of a more extensive set of rights might be hard to justify in view of the current disagreement about justice. See Buchanan and Keohane (2006, 419-422) and Valentini (2013, 100).

The *second criterion* for the legitimacy of global governance institutions is ‘comparative benefit’ (Buchanan & Keohane 2006, 422). This is a relatively straightforward condition and in line with the delegated authority model. The justification for having global governance institutions is primarily instrumental: the basic reason for individuals and states to support these institutions is that they provide benefits that cannot otherwise be obtained. If an institution cannot effectively provide these benefits, then this failure undermines its claim to the right to rule. We would have reasons to question whether those in charge of the institution are genuinely committed to providing the expected benefits that were invoked to justify the creation of the institution.

It is clear that the UNFCCC, in its current form, is not optimally respecting human rights. Hence, the UNFCCC and its Parties do not appear to deliver the envisioned benefits, the provision of which is the basic rationale for their justification. This not only raises doubts about the level of commitment of the actors involved, but also threatens the legitimacy of the UNFCCC.

However, Keohane and Buchanan emphasize that we should understand benefit here as *comparative*, which means that ‘[t]he legitimacy of an institution is called into question if there is an institutional alternative, providing significantly greater benefits, that is feasible, accessible without excessive transition costs, and meets the minimal moral acceptability criterion’ (Ibid.). To settle this matter, much more needs to be said on the concept of ‘feasibility’. We will postpone this discussion to the following section.

The *third criterion* that Keohane and Buchanan propose is ‘institutional integrity’ (Ibid., 422-24). This criterion refers to the extent to which the actual performance of an institution and its self-proclaimed goals align. If there is a large disparity between them, we have reason to question the legitimacy of the institution. If an institution does not meet this criterion, its representatives can be considered ‘either untrustworthy or grossly incompetent’.

The UNFCCC defines ‘stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’ as its ‘ultimate objective’ (UNFCCC 1992, article 2). Since global carbon emissions have rapidly increased in the past two decades, and continue to rise, it is clear that the UNFCCC falls short on its main objective. This would support the conclusion that the agents involved in this institution are untrustworthy or incompetent and, hence, that the UNFCCC does not meet the criterion of institutional integrity. However, in our view, the problem is not that delegates are not concerned about global warming, but rather that they have conflicting commitments. On the one hand, they have special obligations towards their compatriots. On the other hand, they have general obligations towards

humanity at large. They need to find a balance between (perceived) national interests and general interests on a global scale, as we will explain below.

What should we conclude from this brief evaluation? Does its failure to meet one of the criteria immediately imply that the UNFCCC is illegitimate as a global governance institution? Buchanan and Keohane (2006, 424) refer to John Rawls (1971) to conceptualize their three substantive criteria as ‘counting principles’: ‘the more of them an institution satisfies, and the higher the degree to which it satisfies them, the stronger its claim to legitimacy’. The results of our evaluation of the UNFCCC do not look promising: the UNFCCC clearly fails the first criterion (minimal moral acceptability), and it scores rather poorly on the second criterion (comparative benefit). Furthermore, it does not seem to meet the third criterion (institutional integrity), although we have conceded that this might be due to the conflicting commitments of delegates, rather than to their untrustworthiness or incompetence. However, Buchanan and Keohane also argue that it would be excessive to claim that their criteria are *necessary* conditions, because there might be extraordinary circumstances in which an institution would fail to satisfy one or two of them, yet still reasonably be regarded as legitimate. The only way to save the legitimacy of the UNFCCC would be to prove that the current arrangement really is the best feasible option. If there is no feasible institutional alternative and the non-institutional alternative would make things even worse, the UNFCCC could still claim to be legitimate, even if inadequate.¹⁰ We will now examine whether there are valid reasons to underpin this claim.

6.5 The feasibility of an institutional alternative

We will start this section by elaborating ‘International Paretianism’, a principle defended by Eric Posner and David Weisbach (2010; 2012). In their view, a climate treaty, in order to be feasible, should not make any of the participating states worse off:

Any treaty must satisfy what we shall call the principle of International Paretianism: all states must believe themselves better off by their lights as a result of the climate treaty. International Paretianism is not an ethical principle but a pragmatic constraint: in the state system, treaties are not possible unless they have

¹⁰ Given that the UNFCCC does not meet the criterion of minimal moral acceptability and the fact that its institutional integrity is questionable, it can only remain legitimate if no better alternative is feasible.

the consent of all states, and states only enter treaties that serve their interests.
(Posner & Weisbach 2010, 6, footnote omitted)

Posner and Weisbach (2012, 3) emphasize that International Paretianism is not an ethical principle, but rather a feasibility constraint: 'It is a device to discipline our thinking to ensure that our recommendations can actually be implemented'. According to them, the failure of the climate negotiations is caused by focusing too much on ethically appealing but infeasible proposals. Although acknowledging that exactly determining feasibility is challenging, they propose to use International Paretianism as the standard. With respect to the climate negotiations, this means that a treaty must be designed so that all states consider themselves better off than in the status quo (Ibid., 3-7). This condition does not preclude a climate treaty, since unabated climate change will worsen the status quo for most (if not all) states. It does, however, preclude a treaty that makes certain states 'net losers', for example if they would have to pay more than they gain by mitigating climate change.

On this basis, Posner and Weisbach argue that a treaty is only feasible if it serves the interests of the high emitting states. If not, these powerful states will not comply, which will substantially undermine the efficacy of the treaty.¹¹ However, Caney rightly points out that infeasibility should be distinguished from unwillingness. Showing that a proposed obligation is impossible, is indeed relevant, but saying that certain agents are unlikely to comply, is not a compelling argument to support such a conclusion:

The emitter cannot say (to borrow Posner and Weisbach's words) that "[f]easibility rules out" signing this treaty. He cannot because it is not true: it is quite possible for him to do this. He, therefore, cannot appeal to the infeasibility of committing himself to Pareto-inferior policies because it is *not* infeasible for him to reduce his

¹¹ Martino Traxler is also concerned with pragmatic constraints, but offers an alternative proposal. He claims that states *can* be motivated to comply with a treaty, *if* they consider it to be fair. He therefore argues that we should ignore past emissions and instead focus on equalizing the burdens involved in tackling climate change. These equally burdensome shares can be determined by looking at the relevant opportunity costs. Although this criterion might imply that the developed countries have much more demanding obligations than the developing countries, Traxler believes that it would keep them from defecting from doing their fair share. He thinks that his proposal would put 'the most moral pressure possible on each nation to do its part' (Traxler 2002, 129). However, this proposal has been criticized by Stephen Gardiner and Darrel Moellendorf with arguments similar to those used by Caney to criticize International Paretianism. See Moellendorf (2009) and Gardiner (2004).

emissions. Infeasibility here is not a bar. It should be called what is it, namely “unwillingness.” (Caney 2014, 130, footnote omitted)

Posner and Weisbach might argue that it is impossible for elected representatives to adopt a strong climate policy, because they would be voted out of office if they would do so. According to some climate ethics commentators,¹² citizens of developed countries are unlikely to urge their politicians to negotiate robust climate policy, since they are likely to be unwilling to bear the economic costs involved and averse to the curtailment of their material freedoms this is likely to entail. In general, politicians therefore believe that they could be punished if they implement strong measures. If this is true, they would (at least) partly be justified in thinking that they should defend national economic interests, instead of an adequate climate policy.¹³ As their electorate gives them the impression that they will be punished for implementing an ambitious mitigation plan, this no longer counts as a feasible option. Caney admits that this argument has some plausibility, but thinks it is not convincing. He argues that members of a political community *as a whole* can adopt a stronger climate policy, which refutes the infeasibility-claim (Caney 2014, 131). If both the elected representatives and the electorate would fulfil their respective responsibilities, emissions could be significantly reduced.

We agree with Caney that a stronger climate policy is in principle feasible for a political community as a whole. However, this does not necessarily entail that it is feasible from the perspective of the elected representatives under the current circumstances. Caney rightly notes that considerations of feasibility always need to be examined from the point of view of specific agents. We would argue that adopting a stronger climate policy might in fact be infeasible from the perspective of political representatives and that this infeasibility cannot be reduced to mere unwillingness. Political representatives seem justified in claiming that there is more at stake since they have reason to think that they are at risk of being voted out of office.

In contrast to the dominant binary conceptualization of feasibility (holding that an action is either feasible or infeasible), Holly Lawford-Smith (2013, 245) has developed the concept of ‘scalar feasibility’ as ‘a tool for ranking alternative theories along one of the dimensions relevant to making decisions about what to actually do’. We agree that this provides a more nuanced approach to evaluate the options available to the political

¹² See, for example, Jamieson (2011, 29) and Compston & Bailey (2012, 7).

¹³ Recent empirical research (Bernauer & Gampfer 2015) suggests that public support for unilateral policies to tackle climate change is strong. However, this support is not (yet) reflected in widespread *political* support for politicians and parties that make this issue a priority. Until this condition is met, we believe politicians are (at least partly) justified in thinking they will be electorally punished if they implement strong and costly measures.

representatives under the UNFCCC. In contrast to the binary understanding, a scalar conceptualization of feasibility is better suited to accommodate options that depend on the behaviour of others:

Ending global poverty and achieving global carbon neutrality are both *possible*. But we don't want to say these things are feasible, because we don't want to count all merely possible actions as available in the relevant sense, and we certainly don't want to ignore the importance of collective action problems for infeasibility. The full solution to the problem, I think, comes from insisting on agent-relativity in feasibility assessments. By that I mean that it is very important that we distinguish the agent whose option set we're interested in from all the other agents upon whose actions the outcome might depend. (Lawford-Smith 2013, 250-251, footnote omitted)

Important to note in this context is that Lawford-Smith assumes that the agents involved at least *try* to produce the relevant outcome, primarily because she does not want to let agents off the moral hook too easily. There are, however, certain 'soft constraints' that can limit the feasibility of a proposal. She considers the three most obvious kinds of soft constraints to be economic, institutional, and cultural constraints. We would submit that the entrenched way in which the UNFCCC currently functions, represents an *institutional soft constraint* for the political representatives. The signing members of the Conference of the Parties, the decision-making body of the UNFCCC, are professional politicians in their respective states. Consequently, they have to justify their decisions to their national electorate, which substantially undermines their innovative or game-changing power, at least as things currently stand. They are incentivized to give disproportionate priority to their national (short-term, economic) interests, at the expense of vulnerable people elsewhere.¹⁴ This does not make the adoption of a strong

¹⁴ In some developing countries, especially Bolivia and the small island states (AOSIS), the electorate has in fact granted their politicians a strong mandate to tackle climate change: since these countries are the most vulnerable to climate change, a robust policy clearly is in their national interest. Rather than addressing our argument to the citizens of these countries, we focus our attention on the citizens of the developed countries. Not only do these countries have the highest per capita emissions, they also have a disproportionate influence on the outcome of the negotiations in the UNFCCC. Part of the problem has to do with the procedural rules of the UNFCCC, more specifically the crucial role of consensus decision-making. This rule of procedure gives every country the ability to block an agreement, even if the vast majority would benefit from this agreement (Bodansky & Diringer 2014, 5). Majority voting could break this crippling deadlock, but seems unlikely given the current political background. On the limits of consensus decision-making and the possible implementation of majority voting in the UNFCCC, see Vogel (2014, 14), Kemp (2014) and the next chapter.

climate policy infeasible in the binary sense, but it clearly makes it less feasible in the scalar sense (Lawford-Smith 2013, 254-255).

Can these considerations regarding feasibility save the legitimacy of the UNFCCC? The answer is no. Given the institutional framework in which the elected delegates are embedded, we can arguably grant them that they are ‘trying’. However, Buchanan and Keohane’s conditions of minimal moral acceptability and institutional integrity remain unfulfilled, which means that the UNFCCC can only be legitimate if it is the best available option (i.e. if it meets the second criterion). Caney convincingly argued that this is not the case, as members of a political community *as a whole* (both politicians and electors) are indeed able to adopt a stronger climate policy. The introduction of the concept of scalar feasibility does not change this conclusion. It does, however, indicate that individual electors are to an important extent responsible for the illegitimacy of the UNFCCC. In the last section we will examine how these conclusions affect the responsibility of individual agents in tackling climate change.

6.6 How to deal with the illegitimacy of the UNFCCC on the individual level?

The delegation of responsibilities to tackle climate change from the individual to the collective level has obviously not led to success. However, in contrast to the general perception, we concluded the previous section by acknowledging that this failure should not in the first place be ascribed to the elected delegates. To a certain extent, their claim that a stronger climate policy is not feasible is justified, since their electors fail to give them a strong mandate to strive for a robust climate policy. Caney (2014, 131) rightly points out that ‘both elected and electors have responsibilities’. The failure of the electorate to discharge its shared political responsibility severely limits the availability of feasible options for their political representatives to defend a robust agreement to tackle climate change. The implications of this failed delegation of responsibility for the responsibility of *individual* agents are twofold.

6.6.1 No more hiding behind the delegated authority argument

Most people believe that climate change can best be addressed by governments and supranational institutions – since individual actions lack efficacy. Indeed, Gifford (2011, 293) mentions that ‘because climate change is a global problem, many individuals believe

they can do nothing about it as individuals'. This rationale underpins the delegation of responsibility to the collective level.¹⁵ The validity of this delegation-strategy, however, depends on the way in which we actually perform this delegation. We would submit that the delegation of responsibility has failed in the case of climate change, because the input-side of the model has not fulfilled its part. Most citizens of developed countries do not urge their politicians to negotiate a robust climate policy, but rather vote in ways that give them the impression that they could be punished if they implement strong measures. Politicians thus are (at least partly) justified in thinking that they should defend national economic interests, instead of an adequate climate policy. As responsibility is not delegated to the collective level in a consistent way, most citizens of developed, high emitting countries can no longer invoke this model of political legitimacy as an excuse for the general inaction regarding climate change.

Hiding behind the delegated authority model should therefore be characterized as a mechanism of moral disengagement.¹⁶ As explained in the previous chapter, this concept refers to the psychological mechanisms that people widely use to reconstruct a problem in order to evade their individual responsibility in an unjustifiable way. This tendency for moral disengagement is well known in moral psychology, and should be understood in the broader context of moral agency. According to Albert Bandura (et al.) moral conduct is motivated and regulated by the on-going exercise of self-reactive influence. This self-regulatory system operates through self-monitoring, judgmental, and self-reactive subfunctions:

In this self-regulatory process, people monitor their conduct and the conditions under which it occurs, judge it in relation to their moral standards and perceived circumstances, and regulate their actions by the consequences they apply to themselves. They do things that give them satisfaction and build their sense of self-worth. They refrain from behaving in ways that violate their moral standards, because such conduct will bring self-condemnation. (Bandura 1999, 193-194).¹⁷

However, people sometimes do behave in ways that violate their moral standards. Since this results in a state of dissonance which is psychologically uncomfortable, people are naturally inclined to try to reduce or eliminate this inconsistency (Festinger 1957, 18). An important method to achieve this goal is to convince oneself and others that one's reprehensible conduct still falls within moral standards through *changing the perception of*

¹⁵ See also Sinnott-Armstrong (2005); Jamieson (2007, 160-183); Gardiner (2011); Johnson (2003, 271-287); Cripps (2013, 148).

¹⁶ For a discussion of moral disengagement in relation to climate change, see Peeters et al. (2015).

¹⁷ See also Bandura (1991, 68; 2002, 102) and Bandura et al. (1996, 364).

one's actions and reconstructing the situation so as to reduce its moral intensity (Barsky 2011, 62; Gabor 1994, 177; Sykes & Matza 1957, 666; Tsang 2002, 25-26, 37). In this way, moral disengagement enables individuals to engage in unethical behaviour without facing moral self-condemnation. It resolves the inconsistency between one's moral standards and self-interested conduct by articulating reasons why the reprehensible conduct is a justifiable or excusable exception to the general normative rules (Ashforth & Anand 2003, 16).

Specifically in the context of climate change, Gardiner has analysed this propensity of people to psychologically reconstruct (the perception of) their reprehensible behaviour in terms of *moral corruption*, which involves the shirking of one's responsibilities and off-loading them onto others (especially future people, the poor, and nature) through deceptive arguments, and thus subverts our understanding of the issue at stake.¹⁸ We would argue that two such deceptive arguments or strategies of moral disengagement are specifically deployed in the attempt to deny individual responsibility under a delegated authority model, namely *displacement* and *diffusion* of responsibility (Bandura 1991, 81; 2002, 106; 2007, 19).

The underlying idea of *displacement of responsibility* is that people do not feel personally responsible if they are not (or do not perceive themselves to be) the actual agents of their actions. Climate change is a collective action problem, for which 'institutions are the well-known solution' (Neuteleers 2010). Indeed, large-scale collective action problems cannot be solved by the isolated actions of even large numbers of individual persons (Shue 1988; Cripps 2013; Sinnott-Armstrong 2005). In contrast, collective institutions have a great capacity to take measures regarding regulation, enforcement and coordination of climate action, and investment in renewable energy. There seems to be a widespread belief that national governments and supranational institutions (such as the UNFCCC) are the only causally efficacious actors.¹⁹ In general, people therefore also appear to blame this collective level for its failure to address climate change, and (implicitly or explicitly) hold their own obligations to be fulfilled with the delegation of responsibility. In this way, they invoke the delegated authority argument to exonerate themselves from blame for the violations of basic human rights we mentioned above. However, we would argue that they could only be exonerated if they grant their political representatives a mandate that is robust enough to effectively tackle climate change. If they fail to indicate that they attach great importance to the implementation of a strong climate policy, they are responsible for the failed delegation of responsibilities to tackle climate change and can no longer hide behind the delegated authority model. We would argue that this condition is not met

¹⁸ See Gardiner (2011b, chapter 9).

¹⁹ Peeters et al. (2015, 33).

and that we should urgently recognize that the delegated authority model is being misused to facilitate moral disengagement and to evade responsibility for the violation of basic human rights entailed by climate change.

The second relevant strategy of moral disengagement is *diffusion of responsibility*, through which people aim to exonerate themselves from responsibility by emphasizing division of labour, group decision-making and collective action. Under a delegated authority model, people might invoke the argument that their individual vote does not suffice to give a strong mandate to their political representatives in order to diffuse their share of responsibility for the current inaction. However, by invoking the argument that their vote does not make any difference at all, people commit a mistake in moral mathematics, namely *ignoring small chances* (Parfit 1984, 73-75). The possible benefit (that is, mandating political representatives to insist on a robust climate policy) is arguably so large that it outweighs the small cost of voting, even on the infinitesimal chance that an individual vote might make a difference.

Conversely, it can be maintained that the chance of making a difference is too small to outweigh the cost of voting, even if the possible benefit is enormous. In each case, however, it is inaccurate to assume that an individual vote does not make any difference at all, since each individual vote increases the political support for robust climate change policies and encourages politicians to take such leadership risks. Although this benefit might be minute, we agree with Cripps (2013, 148) that promotional actions (such as voting for and supporting parties that explicitly advocate robust policy measures to tackle climate change) ‘can still contribute to a stockpile of impetus for collective change’. Therefore, rather than convincingly exonerating people from responsibility, the deceitful reference to the delegation of responsibility corresponds to moral disengagement through diffusion of responsibility.

Since the delegated authority model is being misused to facilitate moral disengagement (through both displacement and diffusion of responsibility), we are no longer justified to shift the blame for the failure to effectively tackle climate change onto our representatives and the institution they constitute, and we can no longer deny that we, as individuals, bear an important responsibility.

6.6.2 Take responsibility, both politically and individually

How, then, should we understand this responsibility? Gardiner has argued that the political representatives can legitimately be morally criticized for their failure to discharge the responsibilities delegated to them. Above we explained why we believe this statement should be qualified to some extent. We claim that it might arguably be

infeasible for our representatives to implement a stronger policy to tackle climate change, but only because we as the electorate do not fulfil our responsibilities – we fail to give them a strong mandate to insist on robust climate action. We agree with Gardiner’s conclusion that the failed delegation of responsibilities does not let individual citizens off the hook:

If the attempt to delegate effectively has failed, then the responsibility falls back on the citizens again, either to solve the problems themselves or, if this is not possible, to create new institutions to do the job.²⁰ If they fail to do so, then they are subject to moral criticism, for having failed to discharge their original responsibilities. (Gardiner 2011a, 54)

With regard to the first part of this conclusion, we would submit that there are indeed good reasons to question whether we should exclusively look at the collective level to tackle climate change – not only because the responsibility falls back on the citizens when the delegation has failed, but also because ‘what states do must be carried out ultimately by individuals’ (Lichtenberg 2014, 9). Moreover, the potential effect of action undertaken by individuals and households to reduce their emissions should not be disregarded. Vandenberg et al., for example, have identified *low-hanging fruits*: seven actions which, together, can provide a reasonable chance of reducing annual individual and household emissions by seven per cent within five years. Gardner and Stern have composed a *short list*, consisting of nine immediate, low-cost actions regarding transportation and living by which individuals and households in the US can reduce their total direct energy consumption by one-quarter (which would amount to 10 per cent of total national greenhouse gas emissions in the USA). Dietz et al. have specified a *behavioural wedge*: some effective, nonregulatory behaviourally oriented policies and interventions can reduce emissions in the household sector by approximately 20 per cent within 10 years. The IPCC

²⁰ Gardiner is skeptical regarding the potential functioning of the UNFCCC (see Gardiner 2014). He argues that the current institutions are not designed, and therefore ill-equipped, to promote intergenerational concerns (the ‘tyranny of the contemporary’). He claims (Ibid., 308) that the UNFCCC has “so far proven inadequate to the task, largely because of the dominance of national institutions and their familiar—short-term and economic—concerns”. Therefore, we need a global constitutional convention to overcome this “institutional gap” with respect to future generations. We agree with Gardiner that his proposal would boost intergenerational concerns. However, rather than concluding that there is an inherent defect in the UNFCCC that makes its failure inevitable, we believe that citizens should first and foremost acknowledge their political responsibility in determining policies. The UNFCCC and the constituting states might be able to tackle climate change, yet the possibilities at hand should be used responsibly. As long as the responsibility at the input-side of the delegated authority model is not fulfilled, it is premature to conclude that the UNFCCC cannot be effective in tackling climate change.

similarly identifies a whole range of everyday activities in which behavioural change could result in a high energy saving and greenhouse gas emissions reduction.²¹

It cannot be denied, however, that states (in principle) have a great capacity to tackle climate change, and that collective agreements will be necessary in order to outline climate action, and to take measures that cannot be taken by individuals (*inter alia*, regulation and enforcement, coordination, investment in renewable energy, and reduction of fossil fuel subsidies). For this reason, we are not (yet) prepared to give up on the delegated authority model. According to Gardiner, if the delegation has failed and individuals are incapable of solving the problem themselves, they should create new institutions – or, we would add, reform existing institutions – to tackle climate change. In our view, acknowledging the political responsibility of individual citizens in determining the policies pursued by the existing institutions is a precondition for this. Climate change can be tackled by the UNFCCC and the constituting states, yet we need to make responsible use of the possibilities at hand.

This means that we need to make it clear to our political representatives that we attach great importance to the effective tackling of climate change. We need to grant our representatives a more robust mandate to take the necessary actions, even if these are harmful for our national economic interests. We thus have to disassociate ourselves from the ‘dominant view’ that ‘those involved in the creation and revision of international laws, treaties, agreements, or conventions or of intergovernmental agencies and organizations are morally permitted (and perhaps even required) robustly to advance the interests of their home country in such negotiations’ (Pogge 2013, 298). In this way, Thomas Pogge convincingly advocates a cosmopolitan stance, whereby the design of global institutional arrangements is guided by the needs and interests of *all* human beings, weighted equally. As we have argued above, the UNFCCC does not currently meet this condition.

If we fail to grant our representatives a robust mandate to tackle climate change, we, as citizens, are responsible for the resulting illegitimacy of the UNFCCC. Moreover, and morally even more problematic, we also become complicit in the resulting violations of basic human rights:

²¹ See Vandenberg, Barkenbus & Gilligan (2008, 1720); Gardner & Stern (2008, 20-21); Thomas Dietz et al. (2009, 18452-18456); IPCC (2014, 686-687, especially table 9.2). Although we agree with Cripps’s defense of duties and actions to promote collective action, we believe her dismissal of unilateral individual duties to reduce greenhouse gas emissions is too quick. See Cripps (2013). For an extensive defense of unilateral duties to reduce greenhouse gas emissions on the basis of individual agency, see Peeters et al. (2015).

A citizen giving in to this temptation – disposed for instance to present herself as less likely to vote for the current government if it worked toward global human rights fulfillment at some expense to domestic economic interests – should then judge herself [...] to be implicated in, and co-responsible for, her government's human rights violating negotiating successes. (Pogge 2013, 311)

Although it remains difficult to establish what exactly one (politically) has to do in order not to be complicit, we believe that the *minimal* moral obligation citizens have under the delegated authority model is to vote for parties that explicitly advocate robust policy measures to tackle climate change, since this way of voting signals a willingness to accept the costs of a strong climate policy (Maltais 2013, 602). On the one hand, it can be objected that this obligation is insufficient and that individual citizens have more substantial political obligations to combat climate change. For example, it can be argued that they have an obligation to ceaselessly protest against the current policy of the UNFCCC and its constituting states, and to work for more robust green political movements. We would argue that citizens *at least* have the obligation to vote for parties that explicitly advocate robust policy measures to tackle climate change and that this obligation can be compatible with other, more substantial political obligations.²²

On the other hand, some commentators might argue that such an obligation is too intrusive. Aaron Maltais (2013, 604, footnote omitted) counters this objection as follows:

[...] it should first be made clear that I am not suggesting that individuals can justifiably be coerced to vote a certain way. Rather, the claim is that in order to demonstrate sufficient concern for the interests of those who will be harmed by global warming one at the very least has a moral obligation to vote green. This claim does not challenge each individual's democratic and legal right to vote as they see fit. What it does challenge is the idea that how one votes has some special exemption from moral assessment.

²² See Caney (2014, 125-149). Caney discusses six kinds of action that agents can perform: enforcement, incentivization, enablement, creating norms, undermining resistance, and civil disobedience.

Especially if we want to invoke the argument that it is the task of national governments and supranational institutions to address climate change, we at the very least have the obligation to vote for parties that represent the most likely chance of success.²³

6.7 Concluding remarks

Anthropogenic climate change can clearly be characterized as a violation of at least the basic human rights to life, subsistence, and health, even when these are interpreted in a minimal (negative) way. This characterization should increase the urgency of tackling climate change, but this task appears to be overwhelming for individuals to perform. People therefore tend to look at the institutional level for solutions, which is the underlying rationale for the *delegated authority model*. This model indeed seems to justify the general idea that addressing climate change is primarily the job of governments and supranational institutions. In this chapter we examined the legitimacy of this argument.

We first examined whether the failure to implement an adequate policy to tackle climate change necessarily implies that the relevant institution (the UNFCCC and its Parties) loses its legitimacy. To answer this question, we relied on the theoretical framework developed by Buchanan and Keohane. Since the UNFCCC has not been able to agree on implementing a robust climate policy, it violates the duty to respect basic human rights, and thus clearly fails the criterion of minimal moral acceptability. Moreover, although we have conceded that this might be due to the conflicting commitments of delegates rather than to their untrustworthiness or incompetence, the UNFCCC does not seem to meet the criterion of institutional integrity for it clearly falls short on its main objective (namely, to prevent dangerous climate change). Hence the only way the legitimacy of the UNFCCC could be saved, is by proving that the current arrangement really is the best feasible option.

In this regard, we argued that political representatives might indeed claim that a stronger policy is infeasible from their perspective. The political community as a whole, however, cannot, because the illegitimacy of the UNFCCC is caused by *our* failure to fulfil our responsibility at the input-side of the delegated authority model, rather than being

²³ As we mentioned above, individuals also have an individual responsibility to reduce their greenhouse gases (see also Peeters et al. 2015). Discussing this responsibility into more detail falls outside the scope of this chapter, since our focus here is on the legitimacy of the delegated authority argument.

primarily due to the elected representatives. Since we fail to delegate our responsibility to the collective level in a consistent way, we can no longer invoke the delegated authority argument as an excuse. In order to make a convincing claim that it is the task of the government and supranational institutions to address climate change, we at the very least have the obligation to vote for parties that explicitly advocate robust policies to tackle climate change. If we fail to fulfil this minimalist task, invoking the delegation of responsibilities is tantamount to moral disengagement, namely through *diffusion* and *displacement* of responsibility. If we do not vote for parties that are most likely to make a difference, we can no longer hide behind the delegated authority argument and should accept our complicity in the massive violations of basic human rights caused by the failure to successfully tackle climate change.

We have concluded this chapter by discussing what the failed delegation of responsibility in this context might imply for our responsibility as individual agents. In the next chapter, we will broaden our scope and examine how this situation could be remedied at the level of individual voters, politicians, and institutional reforms.

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Chapter 7 Adjudicating conflicts between justice and democracy: The climate change challenge¹

7.1 Introduction: The relationship between democracy and justice

In this chapter we will focus our attention on the relationship between democracy and justice. Keith Dowding, Robert Goodin and Carole Pateman distinguish three different ways of viewing this relationship (Dowding, Goodin, & Pateman 2004, 13-14). On the *first* view, the concept of democracy and the concept of justice rule over separate spheres, which are hermeneutically isolated from one another. As a consequence, the possibility of conflicts between them is automatically obviated (2004, 13). On the *second* view, democracy and justice are conceptualized as ‘different sides of the same coin’ (2004, 14): either both values imply each other, or there is an underlying value that implies both of them. Again, genuine conflicts between democracy and justice are impossible, or they can be solved by referring to the underlying value. On the *third* view, however,

‘democracy’ and ‘justice’ are genuinely distinct and genuinely competing values that might both be in play simultaneously. In any given case they might pull in different directions; and when they do, there is no straightforward way to adjudicate the conflict by reference to any underlying value that underwrites them both. (Dowding et al. 2004, 14)

In this chapter we will develop arguments for the third view, i.e. that the possibility of genuine conflicts between justice and democracy is real. In our view, the case of climate change (and the democratic efforts to tackle it) provides a clear illustration of such a

¹ This chapter is based on the following article: De Smet, Andries, and Sigrid Sterckx. “Adjudicating conflicts between justice and democracy: The climate change challenge” (under review).

conflict. In what follows, we will examine how possible conflicts between democracy and justice should be solved. In order to be able to do this, we first need to indicate in more detail how we conceive of both democracy and justice.

7.1.1 Democracy

We need to clarify what we mean by ‘democracy’ and how we justify it against alternative options, as well as trying to identify the limits to its authority. As our starting point we will take Tom Christiano’s (2015, section 1) broad definition of democracy as ‘a method of group decision making characterized by a kind of equality among the participants at an essential stage of the collective decision making’. This definition can accommodate different political arrangements, ranging from direct participation and majority rule to a representative democracy with consensus rule, and many others. In the following sections we will discuss how these different democratic arrangements can influence the relationship between democracy and justice and what this implies for the possibility of conflicts between them. The democratic arrangements that are designed to tackle climate change will be the context for this exercise.

Regarding the justification of democracy, Christiano (2015, section 2) distinguishes between a consequentialist defence and an intrinsic defence. The former compares the outcomes of a democratic procedure with those of alternative procedures such as a monarchy or an aristocracy. The intrinsic defence of democracy refers to specific qualities that are inherent to the democratic method. In this account, democracy is commonly said to give expression to the ideas of liberty and equality in a way that endows it with intrinsic value, independent of its outcomes.

We do not wish to deny that democracy can have intrinsic value. However, we follow Richard Arneson (2003, 122) when he argues that:

what renders the democratic form of government for a nation morally legitimate (when it is) is that its operation over time produces better consequences for people than any feasible alternative mode of governance.

Arneson acknowledges that many types of evidence support the conclusion that democracy has the best overall result, but he emphasizes that this judgment is *contingent*. In other words, ‘[D]emocracy is extrinsically not intrinsically just’ (Arneson 2004, 41). This is why Arneson believes we should view democracy as a tool or instrument that should be valued for its results, not for its own sake (2004, 42). Yet this immediately raises the question as to which standard should be used to evaluate these results.

This question gives rise to further questions, for example regarding *the limits to the authority of democracy*. Do citizens have an obligation to obey democratic decisions, irrespective of their content? Is the fact that some rule is democratically decided upon enough to endow it with an overriding normative force? These questions lie at the core of the debate on the nature of the relationship between democracy and justice.

In general, people are thought to have an obligation to obey the state, if that state has political authority. The political authority of democracy can be defended in different ways.² Here, we will discuss potential moral limits to this authority. Christiano (2015, section 5.3) distinguishes between internal and external limits:

An internal limit to democratic authority is a limit that arises from the requirements of democratic process or a limit that arises from the principles that underpin democracy. An external limit on the authority of democracy is a limit that arises from principles that are independent of the values or requirements of democracy.

Internal limits thus function as safeguards for the democratic process. They are in place to ensure that the political rights of citizens are protected against democratic threats. An example of such internal limits are constitutional laws designed to protect minorities. A related problem is the existence of persistent minorities (Christiano 2015) or persistent losers (Dahl 1956). These are people who are always at the losing end of democratic decisions, due to the use of majority rule. Keith Dowding (2004, 36) summarizes this problem as follows:

The problem is not simply that some people do not get the government they want, but rather that minorities do not get what they want on issues which are of importance to them but to which the majority is relatively indifferent.

This situation seems undesirable, but is it sufficient to limit democratic rule? How can we decide in which cases people are justified in claiming that their preferences are neglected in an unjustifiable way? Dowding (2004, 39) points out that we can only settle this matter by referring to a theory of justice. Here we enter the domain of the *external* limits to the political authority of democracy.

² For a discussion of political authority, see Christiano (2013). Exploring this issue in detail falls outside the scope of this chapter.

As mentioned earlier, external limits are limits to democratic authority that arise from values independent of democracy, such as justice. How we should decide *when a consideration of justice should outweigh a consideration of democracy*, however, is highly controversial. It is generally assumed that considerations of justice should be promoted in a democratic way. Conflicts of value should ideally be solved through democratic procedures. However, there are external limits to the political authority of democracy: ‘when decisions made in a democracy are felt to be too unjust then, in the name of justice, that democratic decision may be challenged undemocratically’ (Dowding et al. 2004, 24). In the following section, we will sketch an account that indicates when a democratic decision should be characterized as *too unjust*. More specifically, we will argue for a specific external limit to the political authority of democracy and identify particular conditions under which democratic decisions should be overruled by considerations of justice.

7.1.2 Justice

Deciding when a democratic decision should be overruled by considerations of justice is no easy task and should be handled with extreme caution. People hold divergent beliefs about what constitutes the good life. They disagree about the ideal structure of society and what exactly constitutes justice. Ideally, these differences are accommodated through democratic procedures. However, a number of questions arise. For example, does every view deserve (equal) respect? Can every disagreement be said to be reasonable? In this section we will make some observations on these issues, taking the recent work of Laura Valentini as our starting point.

Valentini has developed an argument based on the notions of equal respect and reasonable disagreement.³ She starts by claiming that duties of justice, unlike duties of friendship or duties of charity, generate ‘rightfully enforceable entitlements’ (Valentini 2013, 94). This means that these entitlements *may be enforced without wrongdoing*, even if people are not sufficiently motivated to comply. Since this is a defining feature of duties of justice, we should not decide lightly which duties are to be considered duties of justice. To settle this matter, Valentini advocates a specific conception of ‘public reason’:

In other words, the demands of justice must be determined through “*public reason*,” corresponding to the area of overlap between different reasonable interpretations of equal respect. When it comes to establishing enforceable entitlements, we can therefore only assume the moral imperative to protect a set of fundamental rights.

³ See also chapter 2.

Beyond this threshold, equal respect itself prevents us from unilaterally establishing the conditions under which our social arrangements count as just or unjust. (Valentini 2013, 100)

Important here is the way in which Valentini understands public reason. She distinguishes between public reason *positively understood*, i.e. what is *de facto* endorsed by the world at large, and public reason *normatively understood*, i.e. what anyone committed to equal respect ought to endorse (Valentini 2013, 102). This distinction clearly corresponds to the area of tension between democracy and justice.

Valentini (2013, 100) concludes that justice demands respect for fundamental rights.⁴ We agree with her that more demanding conceptions of global justice are difficult to justify, given the reasonable disagreement that exists. Important to note is that the duty at issue is a duty to *respect* fundamental rights, not to *promote* them. The interpretation of fundamental rights as *negative* rights makes this a normatively minimalist position, which is widely acceptable. In order to increase its acceptability even more, we will further slim down this account, by restricting which rights should always be respected.

Simon Caney has elaborated a minimal conception of human rights.⁵ He defines human rights as ‘minimum moral thresholds to which all individuals are entitled, simply by virtue of their humanity, and which override all other moral values’ (Caney 2010, 165). According to Caney, everyone is entitled to three key rights: the right to life, the right to health, and the right to subsistence. He (2010, 166) explicitly mentions that, in order to strengthen his argument, he uses the least contentious and most modest formulation of each of these rights, and that this position can be ‘adopted from within a wide variety of different conceptions of the good and ethical worldviews’ (Caney 2010, 169).

In the remainder of this chapter, we will use this minimalist position as our theory of justice. Like Valentini, we argue that equal respect and reasonable disagreement require respect for basic human rights, yet nothing more. Consequently, we believe that the violation of such rights counts as an external limit to the political authority of democracy. The violation of basic human rights can never be justified by referring to the democratic nature of the underlying decision-making process. In cases like that, we would submit

⁴ In addition to this *outcome* component, Valentini also argues for a *procedural* component, establishing a set of fair procedures to determine what justice might demand beyond respect for fundamental rights (2013, 103).

⁵ He has also examined the implications of this account with regard to climate change. See section 6.2. We will discuss this further in section 7.2.

that it is perfectly justified to overrule democratic decisions by considerations of justice.⁶ In the next section, we will apply this theoretical framework to the case of climate change.

7.2 Case study: The climate change challenge

In this section we will first explain why we think the way in which climate change is currently handled is an excellent illustration of the tension that may exist between democracy and justice. Next, we will examine how this tension is caused in general, and subsequently we will focus on the specific functioning of the United Nations Framework Convention on Climate Change (UNFCCC), the institution at the heart of the conflict.

7.2.1 The problem of persistent losers

In the previous section we outlined our minimalist theory of justice, arguing that respecting basic human rights is a necessary precondition for a just world. We mentioned Simon Caney and his focus on three key rights: the right to life; the right to health; and the right to subsistence. The question then arises whether climate change indeed has a negative impact on these basic human rights.

Already occurring and future predicted impacts of climate change on human life include increased mortality (related, for example, to the increased frequency and magnitude of extreme weather events), food and water insecurity, the spread and exacerbation of diseases, conflicts resulting from resource scarcity, and increased migration (see, for example, Costello et al. 2009; IPCC 2014; McMichael & Lindgren 2011). In this way, climate change jeopardizes the fundamental human rights of current as well as future people, including their rights to life, health, and subsistence (Bell 2011, 100-102; Caney 2010; OHCHR 2009). Even when employing a modest and minimal conception of human rights, anthropogenic climate change clearly violates these rights, as ethicists like Caney and Bell have convincingly argued. This poses a serious problem for the political authority of the relevant democratic institutions.

Moreover, there seems to be a second problem that aggravates this situation. In the context of climate change, we are faced with the problem of persistent minorities or

⁶ This position is less extreme than it might seem at first glance. Consider for example the international realm, where human rights violations are often invoked to justify humanitarian interventions.

persistent losers. The same group of people always seems to be at the losing end of the democratic decisions. Although the rich can be said to have caused most of the problem, poor and marginalized people suffer more from climate-related harms, wherever and whenever they live, since they are more vulnerable to the effects of climate change and have less adaptive capacity (IPCC 2014, 803-810, 1066-1069; UNDP 2007, chapter 2). We fully acknowledge that developed countries already face and increasingly will face adverse effects of climate change, yet our focus here is primarily on developing countries. In developing countries more people will be negatively affected by climate change and they will have fewer resources to adapt to these impacts. Effectively tackling climate change is thus even more important from their point of view. However, until now, their interests have never been sufficiently protected in the decision-making processes. They do not get what they want on issues which are of particular importance to them, because the other countries are relatively indifferent to these issues. As mentioned in the previous section, this is exactly how Keith Dowding (2004, 36) summarizes the problem of persistent losers.

7.2.2 The failure of democracy?

How, then, could this situation come about? How is it possible that the basic human rights of particular groups of people are continuously violated under (arguably) democratic political institutions? Two complementary explanations seem to be at play in causing this enduring injustice. The first explanation refers to the fact that ‘existing political institutions focus unduly on the short-term and fail to give adequate protection to people’s long-term interests’ (Caney forthcoming, 3). In this context, Caney mentions the book *The Blunders of our Governments* by Anthony King and Ivor Crewe (2014, 356-359; 395), in which it is claimed that the lack of accountability for the future impacts of their policies makes politicians short-sighted, often with disastrous results. Politicians indeed seem to focus too much on the next election and to neglect the long term impacts of their policies. Caney (forthcoming, 3) labels this ‘harmful short-termism’, referring to an unjustified failure to safeguard long-term interests. A similar point is made by David Shearman and Joseph Wayne Smith (2007), who argue that liberal democracy as such is ill-suited to provide sustainable solutions. They believe that liberal democracy is flawed because it leads to the tragedy of the commons (2007, 11). Shearman and Smith also explain this harmful situation by pointing to the fact that politicians lack accountability for the future impacts of their policies. Since politicians think (with good reason) that they will be rewarded or punished based on their record regarding economic growth, rather than for their efforts to avoid future negative effects of climate change, their incentive is problematic. Shearman and Smith’s grim conclusion therefore is that: ‘[D]emocracy leads

to social decay because politicians, with some exceptions, are short-term caretakers and career seekers, and they are only focused on the next election' (2007, 85).

We need not endorse their strong conclusion to acknowledge the fact that democratic institutions are not very successful in tackling climate change. Besides the harmful short-termism we just discussed, there is another, complementary, explanation for this failure. This second explanation points to another problem of accountability. Politicians do not only lack accountability for the *future* adverse effects of their policies, but also for the adverse effects their policies have on *current* people who do not belong to their respective constituencies. Both factors seem to cripple the effective functioning of the UNFCCC, as we will discuss in the following section.

7.2.3 The failure of the UNFCCC

The UNFCCC is the global governance institution designed to tackle climate change. It defines “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” as its ‘ultimate objective’ (UN 1992, Article 2). Until now, this institution has not been very successful, given the enduring violations of basic human rights that are caused by climate change. In this section we will try to explain this failure.

A first important problem has to do with the democratic nature of the *decision-making process* within the UNFCCC. More specifically, the requirement that all decisions within the UNFCCC should be made by consensus ‘could give a small number of countries the ability to block an agreement from which the vast majority would benefit’ (Bodansky & Dinger 2014, 5) In fact, consensus decision making comes down to giving every party a veto, for: ‘In consensus decision making the objecting party can simply maintain a veto until its demands are met’ (Kemp 2014, 4). It is clear that this procedure can result in a group of persistent losers, even if they do not represent a minority. Requiring consensus could in principle protect minorities, but only if all parties are equally committed to finding an agreement. The failure to conclude a strong treaty clearly indicates that this condition is not met. We will come back to this issue later.

Even if this procedural problem could be solved, the problems of *accountability* mentioned above would still remain. The signing members of the Conference of the Parties, the decision-making body of the UNFCCC, are professional politicians in their respective states. Consequently, they have to justify their decisions to their national electorate, which substantially undermines their innovative or game-changing power, at least as things currently stand. They are incentivized to give disproportionate priority to their national (short-term, economic) interests, at the expense of vulnerable people

elsewhere. The problem is not that delegates are not concerned about global warming, but rather that they have conflicting commitments. On the one hand, they have special obligations towards their compatriots. On the other hand, they have general obligations towards humanity at large. They need to find a balance between (perceived) national interests and general interests on a global scale. Moreover, politicians also lack accountability towards future people, which results in the harmful short-termism Caney mentioned. As a consequence, the violation of basic human rights caused by climate change endures. This harmful situation can never be justified by referring to the democratic nature of the underlying decision-making process.

7.2.4 Conclusion regarding the case study

We have applied a minimalist theory of justice to the case of climate change. We can conclude that climate change is indeed responsible for the violation of basic human rights, which poses a serious problem for the political authority of the relevant democratic institutions. Moreover, we have argued that the authority of these institutions faces even more pressure, because there is a group of persistent losers who never get what they want on issues that are of particular importance to them (for example the protection of their human rights). We examined how this tension between democracy and justice can be explained and, in this regard, we have highlighted two problems of accountability. As politicians lack accountability for the future impacts of their policies, they have a tendency for harmful short-termism. Second, they also lack accountability for the adverse effects their policies have on current people that do not belong to their respective constituencies, which contributes to the failure to agree on a strong policy to tackle climate change. The UNFCCC, designed to put a robust policy in place, even faces a further problem, due to its procedural rules. Its requirement of consensus decision making cripples its effective functioning and aggravates the problem of persistent losers.

Together, these different explanations clearly indicate why democratic institutions in general, and the UNFCCC in particular, fail to implement a strong policy to tackle climate change. The tension between democracy and justice really becomes tangible in the context of climate change. Could our understanding of this tension and its causes guide us in our efforts to solve it?

7.3 How to solve the conflict between democracy and justice?

In this section we will discuss different solutions for the conflict between democracy and justice that exists in the context of climate change. We will propose three possible strategies for ‘making democracy just’ (Goodin 2004, 107), namely ‘role reminders’, institutional reform, and the role of litigation and courts.

7.3.1 Role reminders and the internalization of just reasons

Robert Goodin (2004, 107) describes the task of making democracy just as follows: ‘to ensure that democracy takes account of *all* right (justice-relevant) reasons, and *only* right (justice-relevant) reasons, and does so in the right (just) way’ (emphasis added). Therefore, it is essential that people internalize justice-relevant reasons, and only those reasons. Goodin (2004, 109) argues that this should be done through ‘motivational prompts’, encouraging democratic agents to attach more importance to justice-relevant reasons than they might otherwise do. In order to achieve this, he proposes the mechanism of ‘role reminders’:

I do not aim to ‘change’ people, exactly. I merely aim to ‘remind’ people, when acting politically in their public capacities, that they are acting in their public capacities. By situationally sensitizing them to the roles in which they are acting, such ‘role reminders’ might help to draw political actors’ attention to the performances (obligations and expectations) that are appropriate to that role. (Goodin 2004, 110)

The idea behind these role reminders is that people will focus more on the common good and less on their self-interested preferences, when fulfilling a political role such as voting. Goodin acknowledges that achieving this is a complex challenge, but not an impossible one. Our focus here will not be on the different ways in which altruistic political action could be encouraged. Instead, we will discuss what such political action *should* entail, or, put differently, which obligations we have in our role as citizens. We will argue that we have the stringent obligation to demand from our politicians that they do what is necessary to end the violation of basic human rights caused by climate change. This means that we must hold them accountable for the future impacts of their policies, as well as for the impacts of their policies on people who do not belong to their respective constituencies. We have a political obligation to demand from our politicians that they

stop their harmful short-termism and end the problem of persistent losers in the case of climate change as soon as possible.

In other words, we need to make it clear to our political representatives that we attach great importance to the effective tackling of climate change.⁷ We need to grant them a more robust mandate to take the necessary actions, even if these are harmful to our (perceived) national economic interests. We thus have to disassociate ourselves from the ‘dominant view’ that ‘those involved in the creation and revision of international laws, treaties, agreements, or conventions or of intergovernmental agencies and organizations are morally permitted (and perhaps even required) robustly to advance the interests of their home country in such negotiations’ (Pogge 2013, 298). Thomas Pogge convincingly advocates a cosmopolitan stance, whereby the design of global institutional arrangements is guided by the needs and interests of *all* human beings, weighted equally. If we fail to grant our representatives a robust mandate to tackle climate change, we, as citizens, become complicit in the resulting violations of basic human rights:

A citizen giving in to this temptation – disposed for instance to present herself as less likely to vote for the current government if it worked toward global human rights fulfillment at some expense to domestic economic interests – should then judge herself [...] to be implicated in, and co-responsible for, her government’s human rights violating negotiating successes. (Pogge 2013, 311)

It is difficult to establish what exactly we (politically) have to do in order not to be complicit in this way. Do we have an obligation to ceaselessly protest against the current policy of the UNFCCC and its constituting states? Should we start our own political movement or party? We believe that the *minimal* moral obligation we have is to vote for parties that explicitly advocate robust policy measures to tackle climate change, since this way of voting signals a willingness to accept the costs of a strong climate policy (Maltais 2013, 602). Some commentators might argue that such an obligation is too intrusive. However, Maltais counters this objection as follows:

[...] it should first be made clear that I am not suggesting that individuals can justifiably be coerced to vote a certain way. Rather, the claim is that in order to demonstrate sufficient concern for the interests of those who will be harmed by global warming one at the very least has a moral obligation to vote green. This claim does not challenge each individual’s democratic and legal right to vote as they see

⁷ See also section 6.6.2.

fit. What it does challenge is the idea that how one votes has some special exemption from moral assessment. (Maltais 2013, 604, footnote omitted)

In this way, role reminders can motivate us to fulfil our political obligation as voters. Yet the further question arises as to what this mechanism might imply for the obligations of our political representatives. More specifically, what do they need to do when we, as citizens, fail to fulfil our task? If the citizens they represent vote for a policy that is unjust, politicians need to strike a balance between justice and democracy. The fact that representatives are only accountable to their own electorate for giving priority to their interests and rights, makes it even more plausible that they will prioritize democratic demands over considerations of justice.

However, this situation will sometimes be unjustified. In section 1 we have argued that the violation of basic human rights can never be justified by referring to the democratic nature of the underlying decision-making process. This violation should count as an external limit to the political authority of democracy. Consequently, it can sometimes be perfectly justified to overrule democratic decisions by considerations of justice. Moreover, this might be a characterizing feature of duties of justice. Laura Valentini claims that duties of justice, unlike duties of friendship or duties of charity, generate 'rightfully enforceable entitlements' (Valentini 2013, 94). This means that these entitlements may be enforced without wrongdoing, even if people are not sufficiently motivated to comply. As this is a defining feature of duties of justice, we should not decide lightly which duties are to be considered as duties of justice. We have explained earlier why, in view of reasonable disagreement and equal respect, only respect for basic rights can be required. If we would extend the range of duties of justice, we would be imposing our conception of the good on others in an unjustifiable way.

However, when basic human rights are being violated, politicians can be permitted to overrule democratic concerns in order to end this situation. Moreover, politicians thus not only have permission to give priority to justice instead of democracy, they can be obliged to do so. Reminding politicians of this special obligation that is generated by their public role might lead them onto the right track.

Although politicians might be perfectly justified (and even have an obligation) to enforce duties of justice, the current political situation makes this very unlikely. Since the signing members of the Conference of the Parties (i.e. the decision-making body of the UNFCCC) are professional politicians in their respective states, their focus on getting re-elected is perfectly understandable. Hence, under the current political circumstances, a solution to the conflict between justice and democracy will have to come from the voting citizens. We could, however, also try to change the political framework.

7.3.2 Institutional reforms

If Goodin's mechanism of 'role reminders' would be effective, it would provide an elegant solution for the conflict between justice and democracy. If voters and politicians would clearly think through which obligations are associated with their respective roles, the persisting injustice resulting from climate change could be alleviated within the current political structures. Through the way they vote, citizens *could* hold their politicians accountable for the future impacts of their policies, as well as for the impacts of their policies on people who do not belong to their constituencies. Politicians *could* implement strong policies to tackle climate change, even if this is not demanded by their electorate. However, as things currently stand, this scenario is not very likely. Given the economic and financial crisis, voters tend to emphasize the importance of their national economic interests even more, and politicians are likely to follow. We will therefore discuss some proposed reforms at the institutional level that might offer a way out of the current gridlock.

7.3.2.1 The international level

First we will discuss a possible change at *the international level*, namely within the functioning of the UNFCCC. We already mentioned that its procedural rules are conducive to its failure (see section 7.2.3). Here we will explain this further and discuss a possible solution.

The failure of the UNFCCC to achieve a strong agreement to tackle climate change can to a large extent be explained by its use of consensus decision making. In fact, by requiring that all decisions within the UNFCCC be made by consensus, the UNFCCC sacrifices effectiveness in favour of legitimacy (Biermann & Gupta 2011; Schroeder, Boykoff & Spiers 2012). In this context, Luke Kemp refers to the 'Law of the Least Ambitious Program' (Hovi & Sprinz 2006, 28). This is the tendency for unanimous decision making to produce "lowest-common denominator" outcomes and serving the interests of the least ambitious party' (Kemp 2014, 4). Indeed, under consensus decision making, every country has a *de facto* veto to block an agreement, hence this scenario is not hard to imagine. Kemp therefore argues for majority voting as an alternative that could avoid this rather perverse effect. Moreover, he believes that voting is a better consensus-builder than consensus decision making itself:

Voting often acts as a deterrent to blocking, a kind of 'nuclear threat' that encourages compromise. [...] Voting switches the emphasis away from minority blockers and gives greater leverage to the majority. The threat of a vote often forces the least ambitious to become more accommodating. (Kemp 2014, 4)

More specifically, Kemp argues that majority voting could result in a semi-global approach to international climate policy. The idea is that by bypassing less ambitious countries like the United States, more progressive outcomes could be reached by a semi-global, critical mass of countries. In this way, majority voting could prove both more efficient and more effective than the current consensus decision making.

What, then, are the chances of majority voting being adopted into the UNFCCC? Kemp discusses two possible ways in which this might happen, namely amending the Convention itself or by adopting the rules of procedure (Kemp 2014, 7). Amending the Convention would give rise to tremendous legal difficulties, due to the requirement of ratification (Kemp 2014, 7-8). Adopting the rules of procedure does not need ratification, yet it does require consensus agreement. Kemp believes this second strategy can be successful, but acknowledges that this is 'largely contingent upon underlying political and institutional dynamics' (Kemp 2014, 9). We agree with Kemp on the latter point, but we have serious reservations about the feasibility of this option. We believe that the historical record of the UNFCCC and its path dependency do not give cause for optimism. Kemp, however, argues that this failure might be a necessary intermediate step on the way towards success: 'The most important factor in breaking path dependency in the UNFCCC is crisis. Political failures have a catalysing effect upon the negotiations' (Kemp 2014, 15). The short term failure of the UNFCCC might then prove to be crucial for its long term success (Kemp 2014, 27). This might well be, but it seems just as probable that the failure of the UNFCCC might lead to the bankruptcy of the practice of international negotiations. For this reason, it might be recommendable to turn to the level of the individual states. Which institutional reforms could be implemented at the national level to solve the conflict between democracy and justice in the case of climate change?

7.3.2.2 The national level

The failure of most democratic national governments to implement a strong policy to tackle climate change can be explained by the very lack of accountability we discussed earlier in the section on the failure of democracy (section 7.2.2). Whereas the proposed institutional reform of the UNFCCC (majority voting instead of consensus decision making) primarily attempts to fix the disastrous effects of the lack of accountability towards non-compatriots, we will here focus more on reforms to end harmful short-termism.

We will critically assess a 'five-fold package' of reforms, proposed by Caney (forthcoming). He explicitly mentions as his overarching aim 'to enhance the accountability of the decision-making process in ways that take into account the interests

of persons in the future' (Ibid., 1). His proposal is partly inspired by the system that is currently operating in Finland⁸, which could be interpreted as evidence of its feasibility.⁹

Caney's proposal consists of five possible reforms with the aim of ending harmful short-termism (Ibid., 1-2). First, he proposes to require incoming governments to issue a *Manifesto for the Future*, in which they outline the long term effects of their policies. Second, a *Committee for the Future* should be implemented to assess the adequacy of the government's *Manifesto for the Future*. Third, there should be a regular *Visions for the Future* day, to enable the opposition to scrutinize the *Manifesto* and the progress made by the government. Caney emphasizes that this should be done in a public deliberative forum, as this could have a 'chastening effect' (Ibid., 2). Moreover, 'by instituting such a feature into the parliamentary process it would put pressure on politicians to take seriously the impacts of their decisions on the long-term' (Ibid.).

These three elements can only work well if governments, the opposition, civil society organizations, and the general public have access to 'reliable analyses of the impacts of government action and inaction' (Ibid., 2). That is why Caney argues for an *Independent Council for the Future*, an external body 'whose role is to produce periodic reports that (a) chronicle long-term trends and the likely impact of current policies and alternative policies, as well as (b) looking back to the past to draw attention to changes over time' (Ibid.). The fifth and final element of his proposal is the implementation of *Performance Indicators* which would focus on long term goals and assess performance over long time periods. Together, this 'five-fold package' of reforms should tackle the harmful short-termism that characterizes the way national democracies currently work.

Caney (Ibid., 4-6) then suggests four criteria to evaluate proposals to tackle harmful short-termism: effectiveness, moral legitimacy, political sustainability, and political accessibility. We agree with Caney that his proposal would make a positive difference to the protection of long-term interests and that it does not violate any relevant moral criteria. However, regarding the third and fourth criteria, i.e. political accessibility and sustainability, we do have some reservations. We believe that Kemp's claim (2014, 9) that the adoption of the rules of procedure is 'largely contingent upon underlying political and institutional dynamics' is equally applicable in this context.

⁸ See <http://www.futurejustice.org/blog/guest-contribution/guest-article-a-committee-for-the-future>.

⁹ Caney argues that most other proposals face practical and/or moral obstacles (Caney forthcoming, 12-14). He mentions Thomas Wells' proposal to allocate voting rights to civic organizations (Wells 2014), Andrew Dobson's (1996) and Kristian Ekeli's (2005) proposal of elected representatives for the future, and Philippe Schmitter's (2000) proposal to allocate votes to parents on behalf of their children. Discussing these proposals in detail falls outside the scope of this chapter.

Caney is correct to point out that the example of Finland proves that the implementation of a similar proposal is not impossible. However, the fact that examples such as this one are so rare, raises questions about the likelihood of the implementation of Caney's proposal. In this way, it does not score high on the criterion of political accessibility, namely 'whether and how likely it is that we get from 'here' to 'there'' (Caney forthcoming, 6). When considering the criterion of political sustainability, a similar concern can be raised. Caney (Ibid., 5) describes this criterion as the 'tendency to remain in operation over time'. He argues that we should assess whether proposals are designed in such a way that they are difficult to undo, once they are implemented. Since Caney's proposal is not yet implemented, we can only assess similar proposals that have been put into practice. Again, the historical record does not give much cause for optimism. Caney (Ibid., 5-6) acknowledges that initiatives implemented in Israel (Commission for Future Generations) and the UK (Sustainable Development Commission) had a rather short life. The Parliamentary Commissioner for Future Generations in Hungary did not fare any better. The evidence at hand regarding the political sustainability of Caney's proposal thus remains inconclusive, at best.

We are certainly not claiming that Caney's five-fold package is unfeasible or undesirable. However, we do think there are important considerations that urge us to be cautious. The stakes are so high that we should not rely on a solution with a small likelihood of being effectively and sustainably implemented.

7.3.3 The role of courts and litigation

So far, we have discussed two strategies for making democracy more just, namely role reminders and institutional reform. We believe these strategies should be pursued first and foremost. However, given the current non-ideal circumstances, another, 'last resort' type strategy should not be dismissed. Since role reminders and the proposed institutional reforms do not offer any guarantees regarding the ending of the violation of basic human rights, another, more drastic instrument might be justified, or even obligatory. We will end this section by arguing for an obligation to sue underachieving governments.

Caney is rather reluctant regarding this option, because 'the extent to which this approach can successfully reduce *harmful short-termism* depends on what laws or constitutional provisions are in operation in the first place' (Caney forthcoming, 13). He is right to point this out, but there are some promising precedents. The NGO ClientEarth recently started a case against the UK government for their failure to comply with European air quality standards. In April 2015, the Supreme Court ruled in favour of ClientEarth and ordered the UK government to draw up an air pollution clean-up plan.

Moreover, in June 2015, the District Court of The Hague ruled in favour of the environmental NGO Urgenda, ordering the Dutch government to adopt more aggressive targets for the mitigation of greenhouse gas emissions.¹⁰ Thus, even under the existing legislation, there is some leeway to reduce harmful short-termism.

In this context, we would like to refer to the Oslo Principles,¹¹ a document in which an international think tank of legal experts argues that states should already be held accountable for the emissions of greenhouse gases on their territory. Their claim is based on international human rights law, tort law, and environmental law. The precautionary principle plays a crucial part in their argumentation. These ‘Oslo Principles’ can provide the legal basis for law suits against governments that fail to fulfil their obligations regarding climate change. Current cases like Urgenda in The Netherlands and *Klimaatzaak* in Belgium could benefit significantly from this publication.

These promising precedents do not refute Caney’s statement that ‘courts operate ‘downstream’ and have to work with whatever laws have been passed’ (Caney forthcoming, 13). However, they do give us good reason to maintain that litigation can be a successful strategy to end harmful short-termism. We fully support Caney’s proposal and agree that it could be highly beneficial in shaping policy making ‘upstream’. Yet, given the urgency and gravity of the current situation, we have an obligation to pursue every possible solution. This means ending the violation of basic human rights through mechanisms of role reminders and institutional reforms if possible, and through litigation if necessary.

7.4 Concluding remarks

In this chapter we focused our attention on the relationship between democracy and justice. We argued that the possibility of genuine conflicts between democracy and justice is real and that climate change is a clear illustration of such a conflict. Our aim was to examine how we should deal with this specific conflict between democracy and justice.

¹⁰ The Dutch government has appealed against the verdict of the district court in The Hague.

¹¹ For more information on the Oslo Principles, see <http://globaljustice.macmillan.yale.edu/news/oslo-principles-global-climate-change-obligations>.

We started by advocating an instrumental justification of democracy, claiming that democracy should be valued for its beneficial consequences, rather than for its (possible) intrinsic value.¹² This raised questions regarding the potential moral limits to the authority of democracy. We discussed the problem of persistent losers, i.e. people who are always at the losing end of democratic decisions. Moreover, we examined external limits to democratic authority, i.e. limits that arise from values independent of democracy. Deciding on these limits comes down to determining when a democratic decision should be characterized as *too unjust*. We argued that *if* a democratic decision is considered to be too unjust, it should be overruled by considerations of justice. Since this is a controversial issue, we argued for the normatively minimalist position that justice requires respect for basic human rights. From this perspective, the violation of such rights counts as an external limit to the political authority of democracy. The violation of basic human rights can thus never be justified by referring to the democratic nature of the underlying decision-making process.

Subsequently, we explained why we think that the way in which climate change is currently handled is an excellent illustration of the tension that may exist between democracy and justice. We highlighted that climate change is in fact jeopardizing fundamental human rights to life, health and subsistence. Moreover, this situation is aggravated by the problem of persistent losers; people in developing countries do not get what they want on issues which are of particular importance to them, because the other countries are relatively indifferent to these issues. We explained this failure of democracy by referring to two problems of accountability: politicians do not only lack accountability for the *future* adverse effects of their policies, but also for the adverse effects their policies have on *current* people who do not belong to their own constituencies. Both factors seem to cripple the effective functioning of the UNFCCC. The requirement of consensus decision making jeopardizes its successful functioning even further.

We went on to discuss different solutions for this failure of democracy in the case of climate change. We proposed three possible strategies for making democracy just, namely role reminders, institutional reform, and the role of courts and litigation. We made the claim that, as citizens, we have a political obligation to demand from our politicians that they stop their harmful short-termism regarding climate change and end the problem of persistent losers as soon as possible. Consequently, the *minimal* moral obligation we have is to vote for parties that explicitly advocate robust policy measures to tackle climate change. Since this solution can be brought about within the existing

¹² We believe that an instrumental justification of democracy does not necessarily entail that democracy has no intrinsic value. Discussing this issue further unfortunately falls beyond the scope of this chapter.

structures, it is the preferable solution and should be pursued first and foremost. If we fail to fulfil this obligation, however, we become complicit in the resulting violation of basic human rights. In this context, our politicians can be permitted to overrule democratic concerns to end this situation. Indeed, politicians not only have permission to give priority to justice instead of democracy, they can be obliged to do so, due to their public role. However, under the current political circumstances this is very unlikely to occur.

If effective, the mechanism of ‘role reminders’ would provide an elegant solution for the conflict between justice and democracy. However, reforms at the institutional level might be necessary to break the current deadlock. At the international level, we advocated the replacement of consensus decision making by majority voting, since majority voting could prove both more efficient and more effective than the current procedure. However, the historical record of the UNFCCC and its path dependency do not give much cause for optimism. For this reason, we should examine what could be done at the level of the individual states. In this context, we critically assessed Caney’s five-fold package of reforms. Although commendable, we believe we should not rely on this solution in view of its small likelihood of being effectively and sustainably implemented.

The final solution we proposed is a ‘last resort’ type strategy. Since the preferred solutions (role reminders and institutional reforms) do not offer any guarantees regarding the ending of the violation of basic human rights, we believe another, more drastic instrument might be justified, or even obligatory. This involves suing governments that fail to fulfil their obligations regarding climate change. Admittedly, courts can only apply existing legislation, but there are some promising precedents, like the *Urgenda* case in the Netherlands. Moreover, the ‘Oslo Principles’ can provide the legal basis for law suits against underachieving governments. This strategy could thus prove a viable way forward.

When faced with a grave injustice such as the violation of basic human rights caused by climate change, it is unjustifiable to hide behind the democratic nature of the decision-making process. We cannot stand idly by and declare that ‘this is what democracy wants’. The consequences of climate change are too unjust to be tolerated. We urgently need to make democracy more just, through mechanisms of role reminders and institutional reforms if possible, but litigation might be needed to break the current harmful deadlock.

With this chapter we conclude Part II on feasibility objections regarding global justice. After discussing problems at the individual level (chapter 5) and at the institutional level (chapters 6 and 7), we will now focus on the interaction between these two levels. More specifically, in Part III we will examine whether a theory of *institutional* cosmopolitanism

might be able to overcome the motivational barriers to feasibility at the level of the *individual* moral agent.

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Part III

How to overcome the feasibility objections at the level of the individual moral agent?

Chapter 8 How to overcome the feasibility objections at the level of the individual moral agent?

8.1 ‘New Harms’ and the phenomenology of agency

Human agency is often considered to be a precondition for individual moral responsibility (e.g. ‘ought implies can’). Consequently, the apparent lack of individual agency in collective action problems such as climate change is often invoked as a justification for inaction, as we have discussed in the previous chapters. In this context, Samuel Scheffler (2001, 43) argues that an individual agent cannot effectively influence global dynamics or be assumed to have any clear notion about the global implications of his or her personal behaviour (Peeters et al. 2014, 3). He examines what this might mean for the notion of individual responsibility in a globalized context;

[...] the most immediate effect of coming to see the global perspective as morally salient may be, not to present us with a developed, non-restrictive conception of normative responsibility, but rather to generate doubts about our practice of treating the individual agent as the primary locus of such responsibility. (Scheffler 2001, 44)

Scheffler conceptualises the common-sense conception of individual responsibility as restrictive, narrowing the individual agent’s moral world to include only personal ties and immediate effects of conduct. He argues that this common-sense conception is supported by a complex ‘phenomenology of agency’, referring to the characteristic way we experience ourselves as agents with causal powers. He describes this phenomenology of agency as consisting of (at least) three features: acts having primacy over omissions,

near effects having primacy over remote effects, and individual effects having primacy over group effects (Scheffler 2001, 38-39).¹

According to Scheffler, our common-sense morality is further supported by ‘a widespread though largely implicit conception of human social relations as consisting primarily in small-scale interactions, with clearly demarcated lines of causation, among independent individual agents’ (Scheffler 1995, 227). In this way, our common-sense morality seems to originate in low-population, low-density, low-technology societies, with seemingly unlimited access to land and various other natural resources (Jamieson 1992, 148; 2014, 147). Parfit (1987, 85-86) therefore states that common-sense morality works best in small communities (Peeters et al. 2015, 95). We tend to assume individual responsibility only for those near and dear to us, and for a long time these limits to our moral world coincided quite well with the limits of our causal world. However, when facing our current globalized world, this conception seems somewhat out of date.

The circumstances described by Scheffler and Jamieson are no longer in place. Through global processes and dynamics we are causally connected to countless people, and our everyday activities affect (and harm) distant strangers in a variety of ways (see for example Lichtenberg 2010; 2014, 73-74; Parfit 1987, 86):

Over the past few decades, but especially in the past few years—with economic, environmental, and electronic globalization rapidly increasing; near consensus about the threat of severe climate change, whose effects will be felt most by the world’s poorest people; knowledge that the provenance of products we use every day is compromised in a variety of ways; and, finally, the growing impossibility of remaining ignorant of these phenomena—we have learned how our ordinary habits and conduct contribute to harming other people near and far, now and in the future. The model of harm underlying the classic formulation of the harm principle—discrete, individual actions with observable and measurable consequences for particular individuals—no longer suffices to explain the ways our behavior impinges on the interests of other people. (Lichtenberg 2010, 558-559)

In this context, no individual’s action can be said to be *the* cause of harm. Our actions are not sufficient in themselves to cause the harm, they rather contribute to an overall effect (Ibid., 561). Combined with the perceived (spatial and temporal) remoteness of the effects of one’s conduct, this aspect is an important explanatory factor for the motivational gap discussed above. In this way, New Harms do really pose a serious

¹ For an elaborate discussion of the phenomenology of agency in the context of climate change, see Peeters et al. 2015, chapter 3. Our discussion here is based on Peeters et al. 2014, 3-4; 2015, 95-96.

challenge to our moral judgment system; ‘Since an individual’s actions contributing to the New Harms do not produce palpable, immediate, visible effects, we are likely to feel no regret, no guilt, no shame, and no drive to act differently’ (Lichtenberg 2014, 77). Even if we are harming distant others through our role in the process of globalization, this situation might not result in the appropriate psychological state. The sheer magnitude of this complex phenomenon appears to be too overwhelming to fully comprehend:

The global perspective highlights the enormous importance of various large-scale causal processes and patterns of activity that the individual agent cannot in general control, but within which individual behaviour is nevertheless *subsumed* in ways that the individual is, at any given time, unlikely to be in a position fully to appreciate (Scheffler 1995, 232, emphasis added).

Scheffler thus argues that these considerations put pressure on our common-sense practice of treating the individual agent as the primary locus of responsibility. Faced with these New Harms, ‘the phenomenology of agency seems like an increasingly poor guide to the dimensions of human action that are socially significant’ (Scheffler 1995, 229). More specifically, ‘the restrictive conception of moral responsibility, embedded in common-sense morality and supported by the dominant phenomenology of agency, is ill-suited to deliver a moral judgement of climate change that fully covers its complexity’ (Peeters et al. 2015, 96).² Since climate change can be characterized as a matter of omissions, remote effects, and group effects, it differs from a paradigm moral problem. Moreover, as it is ‘not a matter of a clearly identifiable individual acting intentionally so as to inflict an identifiable harm on another identifiable individual, closely related in time and space’ (Jamieson 2010, 437), we fail to grasp its moral severity and do not perceive it as a problem of individual responsibility (Gardiner 2011a, 41; Jamieson 2010, 436; Peeters et al. 2014, 3-4). As this results in a lack of motivation to tackle climate change, we want to examine how this harmful situation can be overcome.

² Gardiner (2006; 2011b; 2013, 132) refers to this as a theoretical storm, which rests on the idea that we lack robust theories in the relevant areas. For a discussion of this issue, see Peeters et al. 2015, 95-98.

8.2 Increasing moral motivation by enhancing moral judgment

Before turning our attention to the level of institutional responsibilities, we first want to explore whether the motivational problem regarding New Harms might be successfully tackled in a different way.³ We will start this attempt by discussing a reason to doubt whether the motivational gap can be explained solely by the inadequacy of our conventional moral concepts that originated in small-scale relations. As we have seen in the previous section, commentators like Lichtenberg (2014, 77) argue that the conditions regarding whom people affect (and how) have changed only relatively recently, giving rise to the concept of ‘New Harms’. In the same line, Parfit (1987, 86) notes that until the 20th century, most of mankind lived in small communities in which each person could only affect a few people close to them. More specifically with respect to climate change, Jamieson (1992, 149) observes that, in contrast to the pollution of London in the eighteenth century (limited in reach), ‘today no part of the planet is safe’ (Peeters et al. 2015, 97).

As we have discussed in chapter 3, our role in the process of climate change generates obligations with a potentially universal scope. The perceived remoteness of the effects of climate change, together with the complicating temporal dimension inherent to this problem, seems to explain the lack of motivation to tackle it. However, Gardiner (2011a, 51) and Pogge (2008, 2) rightly argue that climate change is not the first complex problem humanity has to face. They point out that issues such as the abolition of slavery, colonialism, the civil rights movement, and the emancipation of women, share similar features that might hamper the adequate motivational response. Nevertheless, ‘humanity has made substantial moral progress in its response to these and other forms of harmful conduct and social organization’ (Pogge 2008, 2). Faced with this progress, the argument that our moral judgment system is unable to cope with these so-called ‘New Harms’ loses much of its force.

If it is true that humanity has been confronted with complex social and environmental problems for much longer than many commentators suggest, referring to the origins of common-sense morality leaves open the question why,

³ In section 5.5 we already discussed three different strategies to tackle moral disengagement, namely enhancing people’s moral judgment, promoting alternative values, and tackling the propensity for moral disengagement. We will here elaborate on the first strategy. Our discussion here is largely based on Peeters et al. 2015, 95–98, 108–111.

over the past centuries, conventional moral practices have evolved with respect to other issues, while remaining (at least, according to the same line of reasoning) so thoroughly inadequate to respond to climate change. This explanation does not suffice to understand the motivational gap in relation to climate change (Peeters et al. 2015, 98).

We in no way want to deny that climate change poses a serious challenge to our moral judgment system, due to its inherent complexity. To the extent that climate change (or other harmful aspects of globalization) really is a matter of omissions, remote effects and aggregate effects, we do in fact struggle to grasp its moral urgency. In this way, our phenomenology of agency does cast doubts on treating the individual agent as the primary bearer of responsibility in this context. However, we would argue that ‘the predominant or exclusive focus on the omissions involved in climate change, on the remoteness of its impacts, and on the fact that its effects are the aggregate result of the actions of a number of people is deceitful’ (Peeters et al. 2015, 48). We claim (Ibid., chapter 3) that climate change can and should be assessed as a matter *both* of omissions *and* acts, remote effects *and* near effects, and group effects *and* individual effects. Characterizing it along the lines of the different features of our phenomenology of agency is deceitful and fails to provide convincing support for the invoked doubts about individual agency (Ibid., 59, 73, 91).

Rather than emphasizing our failure to *prevent* climate change (an omission), we should acknowledge that *acts themselves* (that is, greenhouse gas emitting activities) are causally responsible for the harmful effects of climate change. Since people tend to experience their acts as having primacy over omissions (the first feature of our phenomenology of agency), this way of framing our role in the process of climate change should strongly increase the moral urgency of climate change for individual agents (Ibid., 52).

In the same way, we should not focus on the *remoteness* of climate change’s impacts, as climate change also has significant *near effects*. Since people tend to experience their causal influence regarding near effects as more real than regarding remote effects (the second feature of our phenomenology of agency), we might expect that emphasizing these near effects of climate change will strongly increase its moral urgency for individual agents (Ibid., 64).

According to the third feature of our phenomenology of agency, we tend to minimize our causal contributions to group effects relative to individual effects: ‘when an outcome is the joint result of the actions of a number of people, including ourselves, we tend to see our own agency as implicated to a much lesser extent than we do when we take an effect to have resulted solely from our own actions’ (Scheffler 1995, 228). On the basis of this

phenomenological feature, people might feel less motivated to take the necessary actions. Since climate change is an effect of the joint contribution of many emitters, people tend to feel powerless regarding this overwhelming global process. However, as we have illustrated in chapter 5, we in fact do have individual agency in this context. Characterizing climate change as a group effect thus does not suffice to exonerate us from individual responsibility to tackle it (Peeters et al. 2015, 74).

Consequently, invoking the phenomenology of agency to justify the restrictions on individual responsibility imposed by common-sense morality is unconvincing.⁴ Moreover, we believe that the invoked argument could actually inspire an opportunity to (partly) tackle the motivational gap. Indeed, to the extent that New Harms like climate change *do* in fact approximate the characteristics of a paradigm moral problem, framing them along these lines could stimulate people's 'drive to act differently'. The first and most obvious strategy to increase people's motivation is thus to enhance their moral judgment based on conventional moral ideas.

Although common-sense morality might not be sufficient to fully capture climate change, even on the basis of its restrictive conception of individual moral responsibility, there is a strong imperative to act. Even under the minimalist conception of global justice we defended in chapter 2, we are clearly harming distant others through our role in the process of climate change (see chapter 3). As this position can be 'adopted from within a wide variety of different conceptions of the good and ethical worldviews' (Caney 2010, 169), emphasizing the harmful effects of our behaviour should in principle convince virtually every one of the moral urgency of ending this situation. Rather than trying to persuade people to adopt alternative, more demanding, values, we need to demonstrate to them that they *are* in fact acting wrongly, even measured by their own standards.

How an argument is framed, can significantly affect the motivation people have to fulfil their obligations (Lawford-Smith 2012). More specifically, whether an obligation is perceived as an obligation of justice or as an obligation of assistance, seems especially relevant. Holly Lawford-Smith (2012, 663) distinguishes between arguments from humanity and arguments from justice, using the distinction between omissions and actions, respectively. Our phenomenology of agency can thus be deployed in such a way that our motivation to fulfil our obligations is significantly strengthened;

⁴ Rather, the inherent complexity of climate change provides them with an opportunity for rationalization: the deceitful characterization of climate change along the lines of the phenomenology of agency facilitates some strategies of moral disengagement. For a discussion of this issue, see chapter 5.

[...] people in general have an omission bias, in that they think omissions causing harms are less bad than actions causing equivalent harms. And if it is true that people in general have a bias towards harm by omission, then it should be true that they will be easier to motivate (pending establishment of a link between guilt and remedy) if they can be brought to accept that they themselves, by acting, are harming the global poor, rather than merely omitting to help the poor when they could. (Lawford-Smith 2012, 666, footnote omitted)

Rather than trying to work around this psychological constraint, Lawford-Smith (Ibid., 671) argues that we should accept the omission bias and use the justice argument rather than the humanity argument. Using the justice argument will make the fulfilment of our obligations (for example global poverty relief) more feasible than using the humanity argument (Ibid., 674).⁵ However, there needs to be a clear link between guilt and remedy for the justice argument to strengthen motivation. Lawford-Smith (Ibid., 671-674) refers to extensive research (for example Boster et al. 1999) suggesting that guilt is conducive to remedial action, if the conditions are right. An important condition is that people must believe that they have control over the situation and that there is an available action that will reduce their feelings of guilt (Lazarus 1991). In other words, people must feel that they have agency and can in fact do something to end or reduce the harmful situation. In chapter 5 we already discussed the agency of individual agents regarding meat and energy consumption. We will here examine how people can be motivated to tackle climate change by framing the problem along the lines of our phenomenology of agency.

To successfully bridge the motivational gap to tackle climate change, communicators thus should incessantly continue to explain to people that they really do have agency in this context, emphasizing the acts, the near effects and the individual effects involved in climate change (Peeters et al. 2015, 109-111). First, the fact that greenhouse gas emitting activities are not as innocent as they might seem needs to be highlighted. By emphasizing that one's emissions are causally responsible for the violation of basic human rights and the harmful effects of climate change, we might expect to strengthen the motivation to end this harmful situation (Ibid., 109).

⁵ Whether or not we can invoke the justice argument to motivate people depends on whether or not they are in fact harming others. In chapter 3 we answered this question regarding the global economic order and climate change. We concluded that sustaining the global economic order can violate our negative duty not to harm others, but that this conclusion depends on the particular interpretation of the historical benchmark. Failing to mitigate climate change, in contrast, does entail a violation of our negative duties, for it actively causes harm and worsens the situation of distant others. In this context, we should urgently characterize our corresponding obligations as obligations of justice, in order to increase the feasibility of successfully tackling climate change.

In this context, John Nolt (2011) estimates that the greenhouse gas emissions of an average US citizen cause the serious suffering and/or deaths of about two future persons. He fully acknowledges that these calculations are extremely rough.⁶ Moreover, it remains uncertain whether such statistical evidence about harms in the future will evoke the strong visceral reactions we would hope for (Lichtenberg 2014, 2; Weber 2006, 106). Nonetheless, it is a noteworthy attempt to communicate ‘some sense of the moral significance of our own complicity in a greenhouse-gas-intensive economy’ (Nolt 2011, 9). In this way, the relation between one’s acts and their harmful consequences could be significantly highlighted (Peeters et al. 2015, 109). Making this relation more tangible could prove an important way to strengthen people’s motivation.

A second way to tackle the motivational gap is to emphasize that the effects of climate change will not only occur in remote places and the far future, but rather are already affecting people both near and distant, in the present as well as the future. Paying more attention to the *already observed climatic changes* and their effects on human lives might heighten people’s sense of urgency (Ibid.). A strategy that could help to achieve this is to *humanize* the victims of climate change. Personifying the affected populations can make people less likely to deploy mechanisms of moral disengagement, and might motivate them to take individual responsibility for the consequences of their actions (Bandura 1999, 202-203). This potential positive effect of increasing perceived similarity and shared identity on pro-social behaviour seems supported by recent social psychological research (Markowitz and Shariff 2012, 246). Moreover, humanization could also have a positive effect on the force of *quasi-moral* motivations, such as love, compassion, and solidarity towards the victims of climate change (see Birnbacher 2009, 281) (Peeters et al. 2015, 109-110).

A third way to strengthen motivation is to create more awareness of ‘how greenhouse gas emitting activities provide a quasi imperceptible but fully real contribution to climate change and belong to a set of acts that together harm other people’ (Ibid., 110). Communicators should thus debunk the challenging argument that one’s unilateral actions do not make any difference by emphasizing that unilateral actions to reduce greenhouse gas emissions have an infinitesimal but *fully real* mitigating effect. Moreover, these individual actions can facilitate collective change or have a positive effect on the actions of others (Ibid.).⁷ We agree with Jamieson (2006, 481-482) that:

Biking instead of driving or choosing the veggieburger rather than the hamburger may seem like small choices, and it may seem that such small choices by such little

⁶ They have also been criticized on methodological grounds by Sandler (2011).

⁷ For a discussion of the futility thesis, see Peeters et al. 2015, 87.

people barely matter. But ironically, they may be the only thing that matters. For large changes are caused and constituted by small choices.

We adopt this strategy in an effort to refute more extreme versions of the claim that individual behaviour is subsumed in large-scale processes in ways that the individual cannot fully appreciate (Scheffler 1995, 232). Having said that, we fully acknowledge that Scheffler's claim is to a certain extent valid and does provide a distinct explanation of the motivational gap. However, this fact does not imply that individuals have *no* agency in this context (Peeters et al. 2015, 110). Emphasizing this fact and more accurately situating individual emitters within these processes, could provide an important obstacle to the deployment of mechanisms of moral disengagement (Ibid.): 'the less moral ambiguity there is surrounding a situation, the less latitude an agent has in negotiating reality in such a way as to provide justification for an unethical action' (Bersoff 1999, 37).

8.3 Institutional efficacy and the delegation of responsibility

The first way in which the feasibility objections at the level of the individual agent can be overcome thus is to enhance people's moral judgment based on conventional moral ideas. By emphasizing that they *are* in fact harming others and acting wrongly, even measured by their own standards, we might expect to heighten their guilt and, under the right conditions, their motivation to end the harmful situation. Using arguments from justice, rather than arguments from humanity, could increase the feasibility of our minimal conception of global justice.

Nonetheless, there are some good reasons to explore possible solutions at the institutional level (Lichtenberg 2014, 67-70). Faced with a (perceived) problem of demandingness and the allocation problem, Lichtenberg argues that collectivizing and thereby institutionalizing our duties might provide a valuable way to mitigate these problems (Ibid., 67). First and foremost, there is the issue of causal efficacy. Although we argued that we do have significant agency regarding New Harms such as climate change, it cannot be denied that our individual impact in this context is small. Problems of this magnitude cannot be solved single-handedly, collective action is needed; 'The aggregate of individually small investments by large numbers of persons could reach a significant sum, especially if cooperation and coordination occurred among those acting in fulfillment of duty' (Shue 1988, 695). Apart from efficacy, Lichtenberg (2014, 69) mentions

a second reason to institutionalize our duties, namely that sharing a burden also lightens that burden. If we act together as a community, each individual person has to do significantly less than he would if acting in isolation (Ibid.). A third, related, reason highlights that institutionalizing our duties might result in nearly full compliance, especially if the collective action is compelled rather than voluntary (Ibid.). However, forcing people to fulfil their obligations might invoke criticism, especially from libertarians. We will come back to this objection in the next section. As a fourth reason, Lichtenberg (Ibid., 69-70) mentions ‘relative disadvantage’:

[...] well-being is largely relative, so even apart from the motivation that comes from seeing substantial change occur through widespread action, giving up goods can involve much less cost to the agent if others give them up too. [...] Compelling everyone to act eliminates the free rider problem, and individuals then have one further reason not to resent contributing to others’ welfare. (Footnote omitted)

As a final reason Lichtenberg points out that the locus of responsibility for problems such as global poverty should be the group rather than the individual, since the existence of these problems cannot be disentangled from ‘deep-seated structural features of institutions in the contemporary world’ (Ibid., 70).

All these reasons seem to underwrite the delegated authority model we discussed in section 6.3. As explained by Gardiner, this model makes the legitimacy of political institutions and their leaders dependent on their ability to solve problems that are difficult to address at the individual level;

According to a long tradition in political theory, political institutions and their leaders are said to be legitimate because, and to the extent that, citizens delegate their own responsibilities and powers to them. The basic idea is that political authorities act in the name of the citizens in order to solve problems that either cannot be addressed, or else would be poorly handled at the individual level, and that this is what, most fundamentally, justifies both their existence and their specific form. (Gardiner 2011a, 53)

The greater efficacy of institutions thus is the basic rationale justifying their existence.⁸ The delegation of responsibilities to institutions could solve the motivational

⁸ On the claim that tackling climate change is primarily a political or collective responsibility, see, for example, Johnson (2003), Cripps (2013), and Jamieson (2005, 304): ‘We should not think that we can do enough simply by

problems we experience at the individual level (partly) due to our phenomenology of agency. However, we seem to have overstretched this practice in an unjustifiable way. This resulted in a certain, narrow vision of modern political justification, according to which:

[...] the role of social and political institutions is to discharge as many ethical responsibilities as possible for the citizenry, so that under an ideal system individuals would not have to worry at all about such responsibilities, but would instead be maximally free to engage in their own pursuits. (Gardiner 2011a, 54-55).

Gardiner argues that it is precisely because the delegated authority model has been so successful in the past that we struggle with acknowledging (the extent of) our responsibilities when this delegation fails. In chapter 6 we already argued that we need to take responsibility, individually and politically, if we want to invoke the delegated authority argument. If we fail to do so, invoking the delegation of responsibilities is tantamount to moral disengagement, namely through *diffusion* and *displacement* of responsibility. In chapter 7, we mentioned the importance of role reminders⁹ in situations where justice and democracy might conflict. In the next section, we will elaborate on what this mechanism of role reminders might imply for politicians under a delegated authority model. Our focus will be on their responsibilities in overcoming the motivational problem at the level of the individual moral agent.

8.4 Role reminders for politicians: The moral obligation to nudge

In chapter 7 we argued that when basic human rights are being violated, politicians can be permitted to overrule democratic concerns in order to end this situation. Moreover, politicians thus not only have permission to give priority to justice instead of democracy,

buying fuel-efficient cars, insulating our houses, and setting up a windmill to make our own electricity. That is all wonderful, but it does little or nothing to stop global warming and also does not fulfil our real moral obligations, which are to get governments to do their job to prevent the disaster of excessive global warming’.

⁹ We also discussed institutional reforms and the role of courts and litigation as strategies to solve possible conflicts between justice and democracy.

they can be obliged to do so. Reminding politicians of this special obligation that is generated by their public role might lead them onto the right track.

Although politicians might be perfectly justified (and even have an obligation) to enforce duties of justice, the current political situation makes this very unlikely. Given the economic and financial crisis, voters tend to emphasize the importance of their national economic interests even more, and politicians are likely to follow. Moreover, we acknowledge that not everyone will accept that duties of justice should sometimes overrule democratic demands. Here we want to argue for an obligation that can accommodate both concerns and offers a way out of the current gridlock; *the moral obligation to nudge*.

Richard Thaler and Cass Sunstein (2008, 6) describe a nudge as:

[...] any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives. To count as a mere nudge, the intervention must be easy and cheap to avoid. Nudges are not mandates. Putting the fruit at eye level counts as a nudge. Banning junk food does not.

The concept is most used in the context of *libertarian paternalism*:

The libertarian aspect of our strategies lies in the straightforward insistence that, in general, people should be free to do what they like – and to opt out of undesirable arrangements if they want to do so. [...] The paternalistic aspect lies in the claim that it is legitimate for choice architects to try to influence people's behavior in order to make their lives longer, healthier, and better. (Thaler & Sunstein 2008, 5)

We believe Thaler and Sunstein make a compelling case. Helping people to make decisions that will improve their *own* welfare seems perfectly justified, if they can opt out easily. However, when the goal is to improve the welfare of *third parties*, the issue becomes (more) controversial (as we mentioned regarding Lichtenberg's third reason for an institutional solution). Thaler and Sunstein (2003, 1162) call this possibility *libertarian benevolence*. We will here argue that politicians can sometimes have an obligation to design default rules in a way that will promote the interests of vulnerable third parties, even if this is not demanded through the democratic decision-making process. An illustrative example of such a measure is a policy to increase organ donations based on presumed consent. Under this policy, people are presumed to be donors, yet they can opt out of this arrangement easily. In nations where presumed consent is the default option (e.g. Belgium, Austria, Denmark), over 90 percent of people consent to the use of their

organs, after death, to benefit others. In nations where people have to take action to *opt in*, this percentage drops dramatically. An example of this option is the United States, where only 28 percent register to make their organs available for donation. Thaler and Sunstein hypothesize that this difference is not a product of deep cultural differences, but rather of ‘the massive effect of the default rule’ (Ibid., 1192). They underpin this claim by a report that suggests that over 85 percent of Americans actually support organ donation.¹⁰

As the example of organ donation illustrates, the choice architecture can have an immense positive impact on the lives of numerous people. From this point of view, the case for libertarian benevolence seems quite straightforward. However, there are two important counter-arguments to consider.¹¹ The first objection concerns the risk of starting down a slippery slope. Since the potential benefits of libertarian benevolence seem so great, how will we decide when such interventions are unjustified? This objection seems quite plausible, but two responses can be provided. First, it is worth noticing that a certain default rule is sometimes inevitable and will always have a considerable effect. Concerning organ donation, both an opt in as an opt out system are viable policy options. However, choosing one as the default rule cannot be avoided. The fact that sometimes no neutral or value-free option exists, should be taken into account when making this decision. Second, as long as the opt-out rights are ensured and easily exercised, the slippery slope could be curbed considerably. We believe this kind of libertarian check refutes the slippery slope argument quite strongly, especially when the inevitability of *some* default rule is also fully acknowledged.

The second objection is more fundamental and seems more robust. It takes us back to the possibility of genuine conflicts between justice and democracy and to the question how such conflicts should be solved. To the extent that libertarian benevolence prioritises considerations of justice over democratic demands, critics might argue that this strategy is unjustified. After all, it seems just as conceivable that democracy should be given priority over justice. If people do not want to promote the welfare of (vulnerable) third parties, they might be acting blameworthy, yet they are acting well within their rights. Especially from a libertarian point of view, it seems unjustified to coerce them in any way to behave more altruistically.

For the sake of the argument, we will not try to question or refute this libertarian framework. We grant its proponents that people should not be forced to aid others, as

¹⁰ <http://www.presumedconsent.org/issues.htm> (no longer accessible).

¹¹ Our starting point for this discussion is the rebuttal by Thaler and Sunstein (2003, 1199-1201) of the objections raised against libertarian paternalism.

long as they did not harm anyone or violate the contracts they voluntarily agreed to. If this condition is met, there are no further enforceable duties. In its strongest form this implies that you cannot be forced to help someone in extreme need, even with little cost to oneself. However, can we still maintain that we are not harming anyone? As we have explained in chapter 3, climate change jeopardizes the fundamental human rights of current as well as future people, including their rights to life, health, adequate food and water, adequate housing, and self-determination. Anthropogenic climate change thus violates even our normatively minimalist standard, namely respecting basic human rights. Through our part in this process, we are violating the human rights of a specific and large subset of persons.¹² We argue that this should count as an *external* limit to the political authority of democracy. As explained, this means that ‘when decisions made in a democracy are felt to be too unjust then, in the name of justice, that democratic decision may be challenged undemocratically’ (Dowding et al. 2004, 24). We claim that our current democratic response to climate change is so unjust that it should be challenged undemocratically. Consequently, we believe that our politicians are entitled, even obligated, to implement measures that could effectively tackle climate change, even if their citizens do not demand this.

However, we here argue for a more limited obligation, namely the moral obligation of politicians to nudge. We believe this obligation of libertarian benevolence can accommodate the two objections we mentioned in the beginning of this section. First, we argue that the obligation to nudge can accommodate the libertarian criticism that the fulfilment of our obligations should not be enforced. First of all because we argue for this obligation to nudge in contexts where we *are* harming distant others (chapter 3). Moreover, nudging, by definition, rules out coercion. The possibility to opt out of the suggested course of action should always be ensured. So even people who want to continue to use stringent standards for establishing harm and in this way deny their complicity can always choose to opt out. The level of coercion thus is low enough to accommodate the libertarian criticism, even if the harmful relationship is denied.

The second objection referred to the possibility that politicians would be punished at the next elections if they would enforce the fulfilment of duties of justice at the expense of democratic demands. However, as we already mentioned, the aim of nudging is to alter people’s behaviour in a predictable way, yet without forbidding any options. We believe that the risk of getting punished electorally can be reduced significantly by ensuring that people can opt out relatively easily. Moreover, recent empirical research (Bernauer & Gampfer 2015) suggests that public support for unilateral policies to tackle climate

¹² Our responsibility in causing the harmful effects of climate change is beyond any reasonable doubt. See IPCC (2013).

change is strong. Although this support is not (yet) reflected in widespread *political* support for politicians and parties that make this issue a priority, we believe it does suggest that politicians who fulfil their moral obligation to nudge might not receive the electoral punishment they might fear.

The practice of nudging is gaining more support and even found its way into the White House.¹³ However, the practice of libertarian benevolence, nudging to improve the welfare of *third parties*, remains controversial. We here argue that libertarian benevolence not only is justified, but rather should be characterized as a moral obligation for politicians. Especially in contexts where we (might) play a role in the violation of basic human rights, politicians are perfectly justified in urging us to end our harmful conduct and fulfil our obligations of justice. To the extent that we are harming (distant) others, the costs of opting out of the proposed action should increase correspondingly. Indeed, if we are harming others, the libertarian criticism loses its meaning.

8.5 Concluding remarks

We started this chapter by acknowledging that individual agency appears to be rather limited in collective action problems such as climate change, which is often invoked as a justification for inaction. Our starting point was Scheffler's claim that the individual agent qua individual agent cannot effectively influence global dynamics, which generates doubts about our practice of treating the individual agent as the primary locus of responsibility in this context. We discussed our phenomenology of agency and how it might explain why we fail to attach the moral severity of a paradigm moral problem to climate change and other New Harms. Since no individual's action can be said to be *the* cause of harm and we perceive the effects of our conduct as remote, New Harms do really pose a serious challenge to our moral judgment system. Consequently, these harms do not result in the appropriate psychological response and we experience a lack of motivation to tackle them.

Before turning our attention to the level of institutional responsibilities, we first explored whether the motivational problem regarding New Harms might be successfully tackled by enhancing our moral judgment. We started out by questioning whether these

¹³ See, for example, <http://www.independent.co.uk/news/world/americas/barack-obama-to-bring-whitehalls-nudge-theory-to-the-white-house-10504616.html> and <http://www.forbes.com/sites/beltway/2015/09/16/obama-nudge-government/#3d5264211f32>.

New Harms really are so new. Although some current global issues (especially climate change) are more intense and have a wider scope, various problems have already occurred that also did not fit the paradigm of harm and moral responsibility. Referring to the origins of common-sense morality thus cannot explain why, over the past centuries, conventional moral practices have evolved with respect to other issues, while remaining (at least, according to the same line of reasoning) so thoroughly inadequate to respond to these New Harms.

We then examined how we could enhance our moral judgment regarding climate change specifically. We argued that the predominant focus on the omissions involved in climate change, on the remoteness of its impacts, and on the fact that its effects are the aggregate result of the actions of a number of people is deceitful. We claimed that climate change should rather be assessed as a matter *both* of omissions *and* acts, remote effects *and* near effects, and group effects *and* individual effects. More generally, we emphasized that how an argument is framed, can significantly affect the motivation people have to fulfil their obligations. More specifically, whether an obligation is perceived as an obligation of justice or as an obligation of assistance, seems especially relevant. Our phenomenology of agency can thus be deployed in such a way that our motivation to fulfil our obligations is significantly strengthened.

The first way in which the feasibility objections at the level of the individual agent can be overcome thus is to enhance people's moral judgment based on conventional moral ideas. By emphasizing that they *are* in fact harming others and acting wrongly, even measured by their own standards, we might expect to heighten their guilt and, under the right conditions, their motivation to end the harmful situation. However, how successful this strategy will be remains to be seen. Moreover, we are still facing a (perceived) problem of demandingness and the allocation problem. We therefore also explored a second way to overcome these problems, namely collectivizing and thereby institutionalizing our duties. In chapter 6 we already argued that the delegation of responsibilities to institutions could solve the motivational problems we experience at the individual level, but only if we fulfil our responsibilities, both individually and politically. In chapter 7 we discussed the importance of role reminders. Here we elaborated on what this mechanism might imply for politicians with regard to their responsibilities in overcoming the motivational problem at the level of the individual moral agent.

We claimed that our current democratic response to climate change is so unjust that it should be challenged undemocratically. Consequently, we believe that our politicians are entitled, even obligated, to implement measures that could effectively tackle climate change, even if their citizens do not demand this. However, the current political situation makes this very unlikely. Given the economic and financial crisis, voters tend to

emphasize the importance of their national economic interests even more, and politicians are likely to follow. Moreover, we acknowledged that not everyone accepts that duties of justice should sometimes overrule democratic demands. Therefore, we argued for a more limited obligation that can accommodate both concerns and offers a way out of the current gridlock; *the moral obligation to nudge*.

We believe that these two strategies (enhancing our moral judgment and libertarian benevolence) might prove extremely valuable in overcoming the motivational gap at the level of the individual moral agent and consequently increase the feasibility of our minimal conception of global justice significantly.

8.6 References

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Chapter 9 Conclusion

Almost four years ago, I started this project with the intention to answer some of the questions on global justice that personally puzzled me. In this concluding chapter, I will provide an overview of these questions and briefly reiterate how we have answered them throughout this dissertation.

9.1 Globalization and global justice

What is global justice?

The first question we have addressed in this dissertation is what global justice exactly means. When I started this project, I would have answered this question in a utilitarian way; global justice should be equated to the greatest happiness for the greatest number. However, lurking doubts concerning this position were part of my motivation to attempt this project. First of all, utilitarianism faces clear feasibility objections, as it is an extremely demanding position. Moreover, far from everyone is convinced that happiness is *the* value or good that we should be promoting globally. There exist a wide variety of ethical viewpoints and conceptions of global justice that cannot be dismissed easily. Examining how we should deal with this disagreement and developing our own position in the debate on global justice thus was the overarching aim of chapter 2.

We started chapter 2 by providing an overview of the key arguments in the debate between realists, society-of-states proponents (and nationalists), and cosmopolitans. First, we dismissed political realism as a kind of scepticism, both on empirical and ethical grounds. Second, we focused on the society-of-states approach and Godwin's famous question what magic there is in the pronoun 'my'? We refuted the efficiency argument and then assessed intrinsic defences of the priority thesis. Proponents of this thesis all believe that the relationship under consideration (nation, state, or community) is

intrinsically valuable, that the corresponding obligations are *integral* to the relationship, and that *no injustice* is involved in giving priority to the relevant group. We granted that condition 1 and 2 might be met, yet made an important reservation regarding condition 3. We argued that whether or not the *distributive objection* proves the priority thesis to be unjust, seems to depend on *the extent* to which we should give priority to our compatriots. In principle, there is nothing inherently wrong with special obligations to compatriots. However, this in no way implies that giving priority is always justifiable. Our relationship with our fellow human beings also has intrinsic value, which generates certain obligations. Consequently, giving *absolute* priority to those with whom we share a nation, state, or community is unjust because it does not give our general obligations their due weight.

The status that one ascribes to special relationships and the corresponding obligations thus is a crucial factor in the debate between society-of-states proponents and cosmopolitans. In this context we have differentiated between *extreme* and *moderate* forms of cosmopolitanism, explaining that moderate cosmopolitans can accept that there are special responsibilities that we owe to our compatriots but not to distant strangers. In this way, moderate cosmopolitanism seems to come close to certain forms of nationalism or the society-of-states approach. We have discussed how our general and special obligations should be balanced in chapters 6 and 7.

Before outlining our own position, we have focused our attention on cosmopolitanism. We first explained which features are shared by all variants of cosmopolitanism and then discussed the different conceptions of cosmopolitanism. Finally, we have assessed the most prominent variants of moral cosmopolitanism, namely utilitarianism, a contractarian account, a needs-based account, the capabilities approach, a Kantian account, and a rights-based account of cosmopolitanism.

In the final section of chapter 2, we have developed our own position in the debate on global justice. We have argued that global justice should be understood in a normatively minimalist way, namely as respecting a limited list of basic human rights. More demanding conceptions of global justice cannot be justified, given the reasonable disagreement that exists and the concept of equal respect. Since this position is a *moderate* (allowing special obligations) and *weak* (not arguing for global equality) form of cosmopolitanism, it will not face as much opposition as extreme and strong accounts. Moreover, by limiting our account to negative rights, we can avoid the allocation problem we have discussed. Conceptualising our position as rights-based also endows the corresponding claims with a special moral status.

In answering the question what global justice exactly means, we were guided by Rawls' concept of a 'realistic utopia'. Since our overarching concern is with the feasibility of

global justice, we were drawn away from extremely demanding positions (e.g. utilitarianism) to the more moderate, minimalist conceptions. However, our normatively minimalist position might be criticized for neglecting the *utopian* side of Rawls' concept. Avoiding the active violation of negative human rights might be said to be too meagre as an idealistic goal. To what extent we are already fulfilling this goal is the question we have examined in chapter 3.

Has globalization changed our responsibilities regarding global justice, and if so, how?

In chapter 3 we have examined how our normatively minimalist conception of global justice affects the obligations we bear within our current globalized world. In other words, we have tried to answer the question whether we are violating the human rights of distant others through our role in the process of globalization. We have used the active violation of negative human rights as our *baseline* for determining harm. If one violates someone's human rights, one is, without any doubt, harming that person. Moreover, if we are harming someone, we acquire a special relationship with the people whose human rights we violate and we bear responsibility towards them, irrespective of whether or not we actually *value* this relationship. We claim that harming someone provides a very strong reason to value a relationship. Through the process of harming, our general positive duty of charity becomes a special positive duty of justice. We have argued that this is not merely a question of semantics; it endows the human right under consideration with more stringency and, thus, hopefully, more motivational power.¹

More specifically, we have focused our attention on two aspects of globalization, namely the global economic order and climate change. We have argued that sustaining the global economic order *can* violate our negative duty not to harm others, but that this conclusion depends on the particular benchmark we use. We have considered three possible benchmarks, namely the past, a counterfactual reference, and a benchmark of fairness, and have established that only the historical benchmark provides a meaningful point of comparison. However, as we can use both a relative and an absolute interpretation of this benchmark, we are unable to determine beyond any doubt whether or not we are harming distant others through our role in upholding the global economic order.

Failing to mitigate climate change, in contrast, does entail a violation of our negative duties, due to our causal role regarding its harmful effects. Consequently, we have a

¹ We have elaborated on the motivational power of framing an argument in chapter 8.

reason to value our relationship with those who are adversely affected by climate change and we bear responsibility for them, even if we do not feel (sufficiently) motivated to assume such responsibility. The harm we cause through climate change thus grounds positive special obligations of justice to remedy this situation, and, at the least, to recompense those harmed and to implement the required reforms.² We urgently need to emphasize that failing to fulfil these obligations is a matter of justice, not charity.

We have concluded this chapter with a plea for caution. Using harm as the decisive benchmark does not always provide a clear recommendation, as our discussion of the global economic order has illustrated. Since whether or not something is considered a harm also determines the status of the corresponding positive duties and, consequently, their normative force, depending on such an all or nothing mechanism seems imprudent. Therefore, we have argued that the ‘vulnerability presumption principle’ should play an important role in this regard. It clearly strengthens our account of characterizing the positive duties of mitigating climate change as special obligations of justice. Regarding the global economic order, however, we have argued that this principle could inspire us to interpret the historical benchmark in absolute numbers, thereby accepting the resulting special obligations of justice. We can thus still deny that we are harming distant others through our role in upholding the global economic order, yet in doing so we must acknowledge that the standards of proof we are using, express a willingness to err at the expense of the most vulnerable people.

Case study: The Health Impact Fund

The globalized world we live in is characterized by a multitude of causal connections. Determining whether or not we are harming others through our role in these processes is anything but straightforward. Moreover, the delegation of responsibilities seems to complicate these causal relations even further. However, in order to fulfil the responsibilities generated by the process of globalization, we need to examine our role in these different contexts thoroughly. In chapter 4, we have therefore conducted a case study to illustrate the possible tension between globalization and the fulfilment of human rights. More specifically, we have focused on the global governance regime designed to regulate intellectual property rights (especially patents) and the effects this regime has for the global fulfilment of the human right to health (especially access to medicines).

² We have discussed the required reforms to tackle climate change and our responsibilities in this context in chapters 6 and 7.

Our starting point for this chapter was the lack of access to essential medicines that affects more than a third of the world's population. After explaining how this harmful situation is caused, we have discussed a range of proposed solutions to address this lack of access to medicines. We have found them all wanting in at least one respect. Consequently, we have focused our attention on the Health Impact Fund (HIF), a supranational body, majoritatively funded by developed countries, intended to address the problem of affordable access to new medicines for diseases primarily affecting developing countries.

We here want to emphasize that the lack of access to medicines is a consequence of the incentive structure of the pharmaceutical industry and the current patent protection. This is clearly illustrated by the impact the TRIPs Agreement had on poor people in developing countries. As the influence of global governance institutions such as the WTO on domestic policy-making grows, the boundaries between the national and the international spheres are disappearing in various contexts. As a consequence, giving absolute priority to our national economic interests, might result in the violation of negative human rights elsewhere.

To the extent that these global governance institutions are determined by democratic governments, their citizens become complicit in the resulting violations of human rights.³ As citizens of a democratic country, we thus have an important obligation of justice to reform these institutions in a way that will end the harmful situation under consideration. We are quite directly implicated in the human rights violations and fail to meet our obligations, even under our minimal conception of global justice. We thus have argued for a cosmopolitan stance, where the design of global institutional arrangements is guided by the needs and interests of *all* human beings, weighted equally. We believe that the HIF is an excellent source of inspiration to successfully tackle this enormous challenge.

9.2 Feasibility objections

In Part I of this dissertation we have tried to answer the questions of what global justice is and how the process of globalization has changed our responsibilities in attaining it. In Part II, we have examined feasibility objections that suggest that cosmopolitan justice

³ If the policies of these global governance institutions turn out not to be determined by democratic governments, their legitimacy should be challenged on this important ground.

should not be strived for because it cannot be attained. Our focus was on the case of climate change, since this aspect of globalization presents a more clear-cut illustration of harm than upholding the global economic order (as we have argued in chapter 3). We are in fact harming distant others through our role in the process of climate change, and consequently bear a special responsibility towards them, irrespective of whether or not we actually value this relationship. We have investigated the feasibility objections regarding tackling climate change, both at the *individual* (chapter 5) and at the *institutional* level (chapters 6 and 7).

The level of the individual

The most commonly invoked feasibility objection at the level of the individual moral agent is that cosmopolitan justice will necessarily remain unfeasible in view of the nature of human beings. The claim is that our common sense conception of individual responsibility is ill equipped to deal with the new and complex modes of interaction that characterize our globalized world. Our moral judgment system is thus said to be inadequate to cope with so-called ‘New Harms’.

In chapter 5 we have examined whether this claim can be invoked to explain the motivational gap regarding climate change. The question we have tried to answer is whether our lack of motivation to tackle climate change really is insurmountable?

The starting point was the fact that although climate change jeopardizes the fundamental human rights of current as well as future people, current actions and ambitions to tackle it are clearly inadequate, which indicates a lack of motivation. The predominant explanation for this motivational gap maintains that our conventional moral judgment system is not well equipped to identify a complex problem such as climate change as an important moral problem. However, we have argued that this explanation is incomplete, since it disregards people’s ability to psychologically reconstruct a problem in order to reduce its urgency or minimize perceptions of their own contribution to it. Moreover, we have argued that the complexity of problems such as climate change precisely provides the necessary latitude for people to deploy strategies of moral disengagement, enabling them to dissociate self-condemnation from harmful conduct.⁴ In this way, emitters are able to maintain their consumptive lifestyle without

⁴ Whether this is a *conscious* strategy has been a subject of discussion. It might be argued that this ‘deployment’ rather is a natural psychological process. Discussing this issue further unfortunately falls beyond the scope of this chapter.

having to accept moral responsibility for the harmful effects of their profligate greenhouse gas emissions.

Since these strategies of moral disengagement contribute significantly to the motivational gap to successfully respond to climate change, we have proposed three avenues for tackling moral disengagement. First, we should attempt to increase the moral urgency of climate change by enhancing people's moral judgment of their contribution to the problem.⁵ Second, we should encourage people to evaluate and reconsider their self-interested materialistic motives. Finally, we have argued that the propensity for moral disengagement itself should be tackled, by promoting a better general understanding of moral psychology and the function of moral disengagement.

We have not denied that climate change poses a serious challenge to our moral judgment system, due to its inherent complexity. Rather, we have argued that moral disengagement is an important additional explanatory factor for the existing motivational gap. When the inadequacy of our moral judgment system is invoked to justify inaction regarding New Harms, we consequently need to be on our guard.

The institutional level

After focusing on the level of the individual moral agent, we have turned our attention to the institutional level. More specifically, we have focused on the institutions involved in the tackling of climate change, namely the United Nations Framework Convention on Climate Change (UNFCCC), the states (and politicians) that constitute this institution (the Parties to the UNFCCC), and the citizens of these states. The questions we have tried to answer are how we should deal with the illegitimacy of the UNFCCC (chapter 6) and how possible conflicts between democracy and justice should be solved (chapter 7).

Our starting point in chapter 6 again was the fact that the response to the challenge of climate change is characterized by inadequate action at all levels. More specifically, we have focused on one argument that is often invoked to explain this inaction, namely that addressing climate change is exclusively the job of *others* – primarily the government and supranational institutions. In this context, we have explained the delegated authority model and then examined the legitimacy of the UNFCCC using three substantive criteria (minimal moral acceptability, comparative benefit, and institutional integrity). In this way, we have tried to answer the question whether the failure to implement a robust policy to tackle climate change necessarily implies that the relevant institution loses its

⁵ See also section 8.2.

legitimacy. With regard to the UNFCCC, we have argued that the only way to save its legitimacy would be to prove that the current arrangement really is the best feasible option.

More specifically, we have examined whether the failure to design a policy that respects basic human rights is due to unwillingness on the part of the political representatives or due to genuine unfeasibility. In contrast to the general perception, we have argued that the failed delegation of responsibilities should not in the first place be ascribed to the elected delegates. Since their electors fail to give them a strong mandate to strive for a robust climate policy, the availability of feasible options for the political representatives to defend a strong agreement is severely limited.

The implications of this failed delegation of responsibility are twofold. First, since responsibility is in fact not delegated to the collective level in a consistent way, most citizens of developed, high emitting countries can no longer invoke this model of political legitimacy as an excuse for the general inaction regarding climate change. Hiding behind the delegated authority model should then be characterized as a mechanism of moral disengagement through which people deny their individual responsibility in an unjustifiable way. Consequently, we are no longer justified to shift the blame for the failure to effectively tackle climate change onto our representatives and the institution they constitute. We should urgently recognize that the delegated authority model is being misused to facilitate moral disengagement and to evade responsibility for the violation of basic human rights entailed by climate change. The second implication of the current illegitimacy of the UNFCCC is that we need to take responsibility (both individually and politically) for the failed delegation of responsibility. If we want to maintain that it is the task of the government and supranational institutions to address climate change, we at the very least have the obligation to vote for parties that explicitly advocate robust policies to tackle climate change. If we fail this minimalist task, we should accept our complicity in the resulting violations of basic human rights caused by climate change.

In chapter 7 we have discussed other ways to deal with the illegitimacy of institutions and to solve possible conflicts between democracy and justice. We have argued that the way in which climate change is currently handled is an excellent illustration of this tension that may exist between democracy and justice, even under our minimalist conception of global justice. We have examined two problems of accountability that contribute significantly to this failure of democracy, namely that politicians do not only lack accountability for the *future* adverse effects of their policies, but also for the adverse effects their policies have on *current* people who do not belong to their own constituencies. Both factors undermine the effective tackling of climate change by democratic institutions significantly, at least in their current form. The successful

functioning of the UNFCCC is further jeopardized by its requirement of consensus decision making.

We went on to discuss different solutions for this failure of democracy and proposed three possible strategies for making democracy just, namely role reminders, institutional reform, and the role of courts and litigation. Since role reminders could solve the problem within the current institutions, it is the most elegant solution and should be pursued first and foremost. If we, as citizens, would fulfil our political obligation and give our political representatives a robust mandate to tackle climate change, they might just succeed. However, if we fail to do so, politicians not only are permitted, but rather have the obligation, to overrule democratic demands by considerations of justice. The current political circumstances (e.g. the two problems of accountability we have discussed) make this course of action very unlikely.

Institutional reforms thus might be necessary to break the current deadlock, both at the international and the national level. Regarding the UNFCCC, we have argued that its current consensus decision making should be replaced by majority voting. At the level of the individual states, reforms should be implemented to end the pervasive and harmful short-termism. However, in both contexts, history does not give much cause for optimism.

Therefore, we might need to adopt a ‘last resort’ type strategy, namely suing governments that fail to fulfil their obligations regarding climate change. If the preferred solutions (role reminders and institutional reforms) fail to end the violation of basic human rights, this more drastic instrument might be justified, or even obligatory. When faced with this enduring injustice, hiding behind the democratic nature of the decision-making process can never be justified.

9.3 How to overcome the feasibility objections at the level of the individual moral agent?

In Part III of this dissertation, we have examined how the feasibility objections at the level of the individual agent should be tackled. More specifically, we have investigated ways to overcome the lack of motivation to tackle climate change.

Our starting point in chapter 8 was the lack of motivation people experience to tackle so-called ‘New Harms’ and the extent to which this is a consequence of our phenomenology of agency. We thus have tried to answer the question whether our

phenomenology of agency really is too ill-suited to deliver a moral judgment of climate change that fully captures its urgency. We believe this claim is excessive and have questioned whether these New Harms really are so new. Moreover, we have argued that climate change *does* in fact correspond to a paradigm moral problem in certain important respects. Climate change is a matter *both* of omissions *and* acts, remote effects *and* near effects, and group effects *and* individual effects, and it should also be characterized along these lines.

More generally, we have argued that the way in which an argument is framed, can have a significant impact upon people's motivation to fulfil their obligations. More specifically, whether an obligation is perceived as an obligation of justice or as an obligation of assistance, can really make a difference from a motivational perspective. If people fully grasp that they *are* in fact harming others and acting wrongly, even under a minimal conception of global justice, we might expect to heighten their guilt and their motivation to end this harmful situation. The first way in which the motivational gap at the individual level can be overcome thus is to enhance people's moral judgment based on conventional moral ideas.

We fully acknowledge that this first strategy will most likely not succeed in bridging the motivational gap completely. Moreover, the causal efficacy of institutions, the perceived demandingness of our obligations, and the allocation problem, all provide good reasons to collectivize and thereby institutionalize our duties. In this way, the delegation of responsibilities to institutions could solve the motivational problems we experience at the individual level (partly) due to our phenomenology of agency. However, all relevant actors need to fulfil their respective responsibilities, for the delegation to be successful.

We have already discussed the mechanism of role reminders as a possible solution for conflicts between democracy and justice. In chapter 8, we have further elaborated on what this mechanism might mean for the responsibilities of politicians in overcoming the motivational problem at the level of the individual moral agent. We have again argued that politicians have the obligation to overrule democratic demands, *if* these result in the violation of basic human rights. We have also assessed the two objections that challenge this claim. First, our claim that duties of justice should sometimes overrule democratic demands might be challenged on theoretical (e.g. libertarian) grounds. A second, more pragmatic, objection is that forcing people to fulfil their obligations might result in electoral punishment for the respective politicians. Enforcing the fulfilment of obligations of justice might thus be both illegitimate and impractical. However, we have argued for a more limited obligation that can accommodate both concerns and offers a way out of the current gridlock; *the moral obligation to nudge*. We have argued that this obligation can accommodate the libertarian criticism, since nudging, by definition, rules out coercion. Moreover, we believe that the risk of getting punished electorally can be

reduced significantly by ensuring that people can opt out relatively easily. In this way, the moral obligation to nudge combines both realistic and utopian elements. Fulfilling this obligation is an important feasible step in attaining our minimal conception of global justice.

9.4 Avenues for future research

In this dissertation we have examined how the process of globalization has changed our responsibilities, with climate change as our focal point. We believe that we should examine whether or not we are harming people through our role in all the different aspects of globalization (e.g. migration, international trade, taxation, the global financial system, ...). We fully acknowledge that our phenomenology of agency complicates our understanding of the (potentially harmful) interactions in which we participate. Moreover, the specificities of the different aspects and the relevant institutions will make this investigation even more challenging. As the world becomes more complicated, so do our responsibilities. However, if we want to convincingly maintain that we are not acting unjustly, even under a minimal conception of global justice, we need to take up this daunting challenge.

Nederlandstalige samenvatting

Globalisering en globale rechtvaardigheid

De eerste vraag die we in deze dissertatie hebben beantwoord is wat globale rechtvaardigheid precies betekent. We worden geconfronteerd met een verscheidenheid aan ethische standpunten en uiteenlopende opvattingen over globale rechtvaardigheid en kunnen deze niet eenvoudig verwerpen. Daarom is de eerste logische stap in ons onderzoek om te onderzoeken hoe we met dit gebrek aan overeenstemming omgaan en om onze eigen positie in dit debat af te bakenen. Daartoe hebben we eerst een overzicht gegeven van de belangrijkste argumenten in het debat tussen realisten, aanhangers van de gemeenschap-van-staten benadering (en nationalisten), en cosmopolitanisten. Vervolgens hebben we de meest vooraanstaande varianten van moreel cosmopolitanisme beoordeeld, zijnde utilitarisme, een contractarische variant, een noden-variant, de capabilities-benadering, een Kantiaanse variant, en een cosmopolitanisme gebaseerd op rechten.

Bij het ontwikkelen van onze eigen positie hebben we geargumenteed dat globale rechtvaardigheid ingevuld moet worden op een normatief-minimalistische manier, namelijk als respect voor een beperkte lijst van fundamentele mensenrechten. Veeleisender posities kunnen niet gerechtvaardigd worden, gegeven dat er een redelijke onenigheid bestaat en dat we elkaar gelijk respect verschuldigd zijn. Aangezien onze positie een gematigde (speciale verplichtingen zijn toegelaten) en zwakke (niet ijverend voor globale gelijkheid) vorm van cosmopolitanisme is, moet ze niet zoveel tegenstand verwerken als extreme en sterke vormen. Dit is een belangrijke kwaliteit met het oog op de haalbaarheid van globale rechtvaardigheid. Daarenboven beperken we onze positie tot negatieve rechten, waardoor we het allocatie-probleem kunnen vermijden. Aangezien we onze positie ook conceptualiseren als een rechten-benadering, krijgen de overeenkomstige aanspraken ook een speciale morele status toegeschreven.

De volgende stap in ons onderzoek was nagaan hoe onze normatief-minimalistische visie op globale rechtvaardigheid onze verplichtingen binnen de huidige geglobaliseerde

wereld beïnvloedt. Anders gezegd, we hebben geprobeerd om de vraag te beantwoorden of we door onze rol in het proces van globalisering mensenrechten aan het schenden zijn. We hebben ons hierbij in het bijzonder gericht op twee aspecten van globalisering, namelijk de globale economische orde en klimaatverandering. We hebben geargumenteed dat het ondersteunen van de huidige economische orde *kan* betekenen dat we onze negatieve plicht tot niet schaden overtreden. Echter, deze conclusie lijkt af te hangen van de specifieke maatstaf die we gebruiken. We pleiten ervoor om het ‘vulnerability presumption principle’ een belangrijke rol te laten spelen in deze context. Als we er niet in slagen de klimaatverandering tegen te gaan, schenden we onze negatieve plichten zonder enige twijfel, aangezien dit actief schade berokkent aan anderen en hun situatie verslechtert. Bijgevolg hebben we een goede reden om onze relatie met diegenen die worden geschaad door klimaatverandering te waarderen en we dragen verantwoordelijkheid voor hen, zelfs als we niet (voldoende) gemotiveerd zijn om deze op te nemen. De schade die we berokkenen via klimaatverandering brengt op deze manier speciale positieve rechtvaardigheidsplichten om deze situatie te remediëren met zich mee. Op zijn minst hebben we de plicht om de getroffen en te compenseren voor hun schade en om de nodige hervormingen door te voeren. We moeten hierbij benadrukken dat het vervullen van deze plichten een kwestie van rechtvaardigheid is, geen liefdadigheid.

Het eerste deel van deze dissertatie hebben we afgesloten door de mogelijk spanning tussen globalisering en mensenrechten meer concreet te onderzoeken aan de hand van een gevalstudie. We hebben onze aandacht gericht op het mondiaal bestuur en beleid dat ontworpen is om intellectuele eigendomsrechten (voornamelijk patenten) te reguleren en de gevolgen van dit regime voor de globale vervulling van het mensenrecht op gezondheid (voornamelijk toegang tot medicijnen). Het Health Impact Fund werd uitgebreid besproken als mogelijke oplossing voor de huidige crisis rond toegang tot essentiële medicijnen.

Problemen rond haalbaarheid

In het tweede deel van deze dissertatie hebben we haalbaarheidsproblemen onderzocht die suggereren dat globale rechtvaardigheid niet moet worden nagestreefd, omdat dit niet bereikt *kan* worden. We hebben onze aandacht gericht op klimaatverandering, aangezien dit een duidelijkere illustratie van schade is dan het ondersteunen van de globale economische orde. De haalbaarheidsproblemen rond het tegengaan van klimaatverandering hebben we zowel op het individuele als op het institutionele niveau onderzocht.

De meest gebruikte tegenwerping op het individuele niveau is dat globale rechtvaardigheid onhaalbaar zal blijven ten gevolge van de menselijke natuur. Hierbij stelt men dat onze gangbare opvatting van individuele verantwoordelijkheid slecht is uitgerust om te kunnen omgaan met de nieuwe en complexe manieren van interageren die onze huidige geglobaliseerde wereld karakteriseren. We hebben onderzocht of deze claim gebruikt kan worden om het gebrek aan motivatie met betrekking tot klimaatverandering te verklaren. De vraag die we hierbij hebben proberen beantwoorden is of het gebrek aan motivatie om klimaatverandering aan te pakken werkelijk onoverkomelijk is.

We erkennen ten volle dat klimaatverandering een enorme uitdaging vormt voor ons moreel oordeelsysteem door de inherente complexiteit van het probleem. We hebben echter geargumenteed dat deze verklaring onvolledig is, aangezien ze geen rekening houdt met de mogelijkheid om een probleem psychologisch zo te reconstrueren dat de ernst ervan verkleind wordt, net als de ervaring van onze eigen bijdrage aan het probleem. Bovendien lijkt het net de complexiteit van dergelijke problemen te zijn, die mensen de ruimte geeft om strategieën van ‘moral disengagement’ te gebruiken, waardoor ze zelfkritiek kunnen loskoppelen van hun schadelijk gedrag.

Na de bespreking van het individuele niveau, hebben we onze aandacht gericht op het niveau van de instituties. Meer concreet hebben we ons gefocust op de instellingen die betrokken zijn bij de strijd tegen klimaatverandering, namelijk de United Nations Framework Convention on Climate Change (UNFCCC), de staten (en politici) die deze instelling vormgeven (de ‘Parties to the UNFCCC’), en de burgers van deze staten.

Eerst hebben we het argument beoordeeld dat het aanpakken van klimaatverandering uitsluitend de taak is van *anderen*, namelijk overheden en supranationale instellingen. In het bijzonder hebben we onderzocht of het uitblijven van een beleid dat de mensenrechten respecteert het gevolg is van onwil van de politieke afgevaardigden of echt een kwestie van onhaalbaarheid. In tegenstelling tot wat algemeen wordt aangenomen, hebben we geargumenteed dat de gefaalde delegatie van verantwoordelijkheden niet in de eerste plaats mag worden toegeschreven aan onze politieke vertegenwoordigers. Aangezien het electoraat er niet in slaagt om hen een sterk mandaat te geven om een robuust beleid te voeren dat klimaatverandering kan tegengaan, wordt de beschikbaarheid van haalbare mogelijkheden voor de politici om een stevig akkoord te sluiten danig ingeperkt. Aangezien het delegeren van verantwoordelijkheid naar het collectieve niveau in feite niet consistent gebeurt, kunnen de meeste burgers van de ontwikkelde landen met een hoge uitstoot dit model van politieke legitimiteit niet langer als een excuus voor het gebrek aan actie gebruiken. Zich verschuilen achter het ‘delegated authority model’ moet dan ook gekarakteriseerd

worden als een mechanisme van ‘moral disengagement’, waardoor mensen hun individuele verantwoordelijkheid ontkennen op een ongerechtvaardigde manier.

Het uitblijven van een sterk beleid dat klimaatverandering daadwerkelijk kan tegengaan, zet de legitimiteit van de relevante instellingen zwaar onder druk. Daarom hebben we onderzocht hoe we moeten omgaan met de vermeende illegitimiteit van instellingen en hoe we mogelijke conflicten tussen rechtvaardigheid en democratie moeten oplossen. We hebben geargumenteed dat de manier waarop klimaatverandering momenteel wordt aangepakt een voorbeeld bij uitstek is van de mogelijke spanning tussen democratie en rechtvaardigheid, zelfs volgens onze minimalistische invulling van globale rechtvaardigheid. We hebben twee aansprakelijkheidsproblemen onderzocht die significant bijdragen aan dit falen van democratie, namelijk dat politici niet aansprakelijk worden gehouden voor de *toekomstige* negatieve gevolgen van hun beleid, noch voor de gevolgen van hun beleid voor mensen die niet tot hun *kiesgebied* behoren. Beide factoren ondermijnen een succesvolle aanpak van klimaatverandering door de democratische instellingen, althans in hun huidige vorm. Daarenboven wordt de succesvolle werking van de UNFCCC verder bemoeilijkt door de vereiste van consensus bij de besluitvorming. We hebben drie mogelijke oplossingen voor dit falen van de democratie voorgesteld, namelijk ‘role reminders’, institutionele hervormingen, en de rol van rechtbanken en rechtszaken.

Hoe moeten we de haalbaarheidsproblemen op het niveau van de individuele morele agent overstijgen?

In het laatste deel van deze dissertatie hebben we onderzocht hoe de individuele haalbaarheidsproblemen opgelost moeten worden. In het bijzonder zijn we ingegaan op manieren om het gebrek aan motivatie om klimaatverandering aan te pakken op te vangen.

Ons startpunt hierbij was het gebrek aan motivatie dat mensen ervaren met betrekking tot zogenaamde ‘New Harms’ en de mate waarin dit een gevolg is van onze ‘phenomenology of agency’. We hebben dus proberen beantwoorden of onze ‘phenomenology of agency’ werkelijk te slecht is uitgerust om een moreel oordeel te vellen over klimaatverandering dat de ernst van het probleem volledig vat. We geloven dat deze claim excessief is en stellen in vraag of deze New Harms werkelijk zo nieuw zijn. Daarenboven hebben we geargumenteed dat klimaatverandering in bepaalde aspecten wel degelijk overeenstemt met een ‘paradigm moral problem’. Klimaatverandering is een zaak van zowel omissies als handelingen, gevolgen ver *en* dichtbij, groepeffecten *en* individuele effecten. Het moet bijgevolg ook op deze manier gekarakteriseerd worden.

Meer algemeen hebben we geargumenteed dat de manier waarop een argument gekaderd of geformuleerd wordt, een aanzienlijke impact kan hebben op de motivatie om verplichtingen te vervullen. Concreet maakt het een motivationeel verschil of een verplichting wordt ervaren als rechtvaardigheidsplicht of als een kwestie van liefdadigheid. Benadrukken dat het vervullen van onze plichten een zaak is van rechtvaardigheid, niet van liefdadigheid, zal hoogstwaarschijnlijk echter niet volstaan om het gebrek aan motivatie volledig op te vangen. Daarom hebben we verder onderzocht wat het mechanisme van ‘role reminders’ zou kunnen betekenen voor de verantwoordelijkheden van politici met betrekking tot het overstijgen van het motivatieprobleem op het niveau van de individuele morele agent. We hebben gepleit voor de morele plicht tot ‘nudging’ als een belangrijke en haalbare stap richting onze minimale invulling van globale rechtvaardigheid.

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